



# Energy Act 2008

## 2008 CHAPTER 32

An Act to make provision relating to gas importation and storage; to make provision in relation to electricity generated from renewable sources; to make provision relating to electricity transmission; to make provision about payments to small-scale generators of low-carbon electricity; to make provision about the decommissioning of energy installations and wells; to make provision about the management and disposal of waste produced during the operation of nuclear installations; to make provision relating to petroleum licences; to make provision about third party access to oil and gas infrastructure and modifications of pipelines; to make provision about reports relating to energy matters; to make provision about the duties of the Gas and Electricity Markets Authority; to make provision about payments in respect of the renewable generation of heat; to make provision relating to gas meters and electricity meters and provision relating to electricity safety; to make provision about the security of equipment, software and information relating to nuclear matters; and for connected purposes. [26th November 2008]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**Status:** Point in time view as at 01/04/2009. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

VALID FROM 06/04/2009

## PART 1

### GAS IMPORTATION AND STORAGE

## CHAPTER 1

### GAS IMPORTATION AND STORAGE ZONES

#### **1      Exploitation of areas outside the territorial sea for gas importation and storage**

- (1) The rights to which this section applies have effect, by virtue of this section, as rights belonging to Her Majesty.
- (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 any of the matters mentioned in subsection (3), or
  - (b) for any other purposes connected with any of those matters.
- (3) The matters are—
  - (a) the exploitation of those areas for the unloading of gas to installations or pipelines;
  - (b) the exploitation of those areas for the storing of gas (whether or not with a view to its being recovered), or the recovery of gas so stored;
  - (c) the exploration of those areas with a view to their exploitation as mentioned in paragraph (a) or (b).
- (4) For the purposes of subsection (3), references to gas include any substance which consists wholly or mainly of gas.
- (5) 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 “Gas Importation and Storage Zone”).
- (6) 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;

“gas” means any substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb);

“installation” includes any floating structure or device maintained on a station by whatever means.

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VALID FROM 13/11/2009

## CHAPTER 2

### IMPORTATION AND STORAGE OF COMBUSTIBLE GAS

#### *Activities requiring a licence*

#### **2 Prohibition on unlicensed activities**

- (1) No person may carry on an activity within subsection (3) except in accordance with a licence.
- (2) But subsection (1) is subject to section 3.
- (3) The activities are—
  - (a) the use of a controlled place for the unloading of gas to an installation or pipeline;
  - (b) the use of a controlled place for the storage of gas;
  - (c) the conversion of any natural feature in a controlled place for the purpose of storing gas;
  - (d) the recovery of gas stored in a controlled place;
  - (e) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraphs (a) to (d);
  - (f) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.
- (4) In this section—

“controlled place” means a place in, under or over—

  - (a) the territorial sea, or
  - (b) waters in a Gas Importation and Storage Zone (within the meaning of section 1(5));

“gas” means any combustible substance which is gaseous at a temperature of 15°C and a pressure of 101.325 kPa (1013.25 mb) and which consists wholly or mainly of—

  - (a) methane,
  - (b) ethane,
  - (c) propane,
  - (d) butane,
  - (e) a substance designated for the purposes of this section by an order made by the Secretary of State, or
  - (f) a mixture of two or more of the substances mentioned in paragraphs (a) to (e).

#### **3 Exception for activities carried on partly on land etc**

- (1) This Chapter does not apply in relation to—

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- (a) the use of a controlled place for the unloading of gas to an installation which is connected with land by a permanent structure providing access at all times and for all purposes;
- (b) the conversion of a natural feature of which part is in a controlled place and part under land, if the operations necessary for the conversion take place wholly or mainly on, over or under land;
- (c) the use of a place for the storage of gas, or the recovery of gas so stored, where—
  - (i) the gas was, or is to be, introduced into the store by means of a well on land, and
  - (ii) part of the place is a controlled place and part is under land;
- (d) the establishment or maintenance of an installation for the purposes of activities falling within paragraph (a).

(2) In this section—

“land” means—

- (a) land in England;
  - (b) land in Wales;
  - (c) land in Scotland landward of the low water mark;
- “well” includes a borehole.

### *Licensing*

## **4 Licences**

- (1) The Secretary of State may grant a person a licence in respect of one or more activities within section 2(3).
- (2) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.
- (3) For this purpose “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

## **5 Applications**

The Secretary of State may by regulations—

- (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
- (b) prescribe requirements which must be met by, or in relation to, a person who makes an application;
- (c) prescribe the manner in which an application must be made;
- (d) prescribe the information which an application must contain and any documents which must accompany it;
- (e) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations.

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## **6 Terms and conditions**

- (1) A licence may be granted on such terms and subject to such conditions as the Secretary of State considers appropriate.
- (2) The provisions of a licence may be expressed by reference to provision made in a Crown lease, and, in particular, may provide—
  - (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
  - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (3) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (4) The provisions of a licence may include—
  - (a) provision requiring the licence holder to obtain the prior written consent of the Secretary of State or another person for specified acts or omissions;
  - (b) provision providing that any such consent may be given subject to conditions.
- (5) The conditions imposed on a consent by virtue of subsection (4)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the Secretary of State considers appropriate.
- (6) In this section—

“Crown lease” has the same meaning as in section 4;

“specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

## **7 Model clauses**

- (1) The Secretary of State may make regulations prescribing model clauses for licences.
- (2) Subject to subsection (3), the model clauses, as they have effect at the time a licence is granted, are deemed to be incorporated into the licence.
- (3) The Secretary of State may decide to exclude or modify one or more of those model clauses in the case of a particular licence.

### *Enforcement*

## **8 Offence to carry on unlicensed activities**

- (1) It is an offence for a person to carry on an activity within section 2(3) at a controlled place unless, at the time the activity is carried on, that person—
  - (a) has a licence for the carrying on of that activity at that place, or
  - (b) is carrying on the activity on behalf of a person who has such a licence.

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- (2) It is an offence for a person to cause or permit another person to commit an offence under subsection (1).
- (3) But subsections (1) and (2) are subject to section 3.
- (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **9 Offences relating to licences**

- (1) An offence is committed by a licence holder if—
  - (a) a thing is done for which the licence specifies that the prior consent of the Secretary of State or any other person is required, without that consent first having been obtained;
  - (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
  - (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;
  - (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the Secretary of State.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain—
  - (a) a licence, or
  - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).
- (4) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for—
  - (a) a licence, or
  - (b) the consent of the Secretary of State or any other person for the purposes of any requirement imposed by virtue of section 6(4).
- (5) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **10 Secretary of State's power of direction**

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The Secretary of State may direct the licence holder to take steps which the Secretary of State considers necessary or appropriate to comply with the provision within a period specified in the direction.

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- (3) The Secretary of State must consult the licence holder before giving a direction under subsection (2).
- (4) If the licence holder fails to comply with a direction under subsection (2), the Secretary of State may—
  - (a) comply with the direction on behalf of the licence holder, or
  - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
  - (a) do anything which the licence holder could have done, and
  - (b) recover from the licence holder any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the Secretary of State as comparable with commercial rates.
- (8) The licence holder must provide a person taking action by virtue of subsection (4) with such assistance as the Secretary of State may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made in the licence with regard to the enforcement of any of its provisions.

## **11 Failure to comply with a direction under section 10**

- (1) It is an offence for a person to fail to comply with a direction under section 10, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **12 Injunctions restraining breaches of section 2(1)**

- (1) Where the Secretary of State considers it necessary or expedient to restrain any actual or apprehended breach of section 2(1), the Secretary of State may apply to the court for an injunction or, in Scotland, an interdict.
- (2) An application may be made whether or not the Secretary of State has exercised or is proposing to exercise any of the other powers under this Chapter.
- (3) On an application under subsection (1), the court may grant such an injunction or interdict as the court thinks appropriate for the purpose of restraining the breach.
- (4) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.
- (5) In this section “the court” means—

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- (a) the High Court, or
- (b) in Scotland, the Court of Session.

### **13 Inspectors**

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Chapter.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
  - (a) the powers and duties of inspectors appointed under this section;
  - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter;
  - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (c. 25) (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—
  - (a) on summary conviction by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
  - (b) on conviction on indictment by a fine.

### **14 Criminal proceedings**

- (1) Proceedings for a relevant 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.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in England and Wales except—
  - (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in Northern Ireland except—
  - (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 13—
  - (a) the words “alleged to have been committed in a controlled place” are to be omitted, and

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(b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.

(6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 13.

### *Supplementary*

## **15 Interaction with the petroleum licensing requirements**

(1) This section applies where there is a licence for the recovery of gas stored in a controlled place.

(2) The Secretary of State may give a direction in respect of the place or any part of it (“the relevant stratum”).

(3) The effect of the direction is that any operations under the licence to recover gas from the relevant stratum are not to be regarded as resulting in the boring for or getting of petroleum for the purposes of Part 1 of the Petroleum Act 1998 (c. 17).

(4) A direction may be given only if the Secretary of State is satisfied that the amount of petroleum which exists in its natural condition in the relevant stratum is so small that it ought to be disregarded for the purposes of that Part.

(5) Where a direction has effect, if the Secretary of State ceases to be satisfied as mentioned in subsection (4), the Secretary of State must give the licence holder a notice revoking the direction and specifying a time for the purposes of subsection (6).

(6) Where a notice is given under subsection (5), the revocation of the direction takes effect—

- (a) if an application for a petroleum licence in respect of the relevant stratum is made by the licence holder before the specified time, immediately before the time the application is determined or withdrawn, and
- (b) in any other case, at the specified time.

(7) Before giving or revoking a direction, the Secretary of State must consult the licence holder.

(8) In this section—

“petroleum” means petroleum to which section 3 of the Petroleum Act 1998 (c. 17) applies;

“petroleum licence” means a licence under that section authorising a person to bore for and get petroleum.

### *Interpretation*

## **16 Chapter 2: interpretation**

In this Chapter—

“controlled place” has the meaning given by section 2(4);

“gas” has the meaning given by section 2(4);

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“installation” includes any floating structure or device maintained on a station by whatever means;

“licence”, except where the context otherwise requires, means a licence under section 4, and “licence holder” is to be construed accordingly.

### CHAPTER 3

#### STORAGE OF CARBON DIOXIDE

##### *Activities requiring a licence*

#### **17 Prohibition on unlicensed activities**

- (1) No person may carry on an activity within subsection (2) except in accordance with a licence.
- (2) The activities are—
  - (a) the use of a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
  - (b) the conversion of any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal);
  - (c) the exploration of a controlled place with a view to, or in connection with, the carrying on of activities within paragraph (a) or (b);
  - (d) the establishment or maintenance in a controlled place of an installation for the purposes of activities within this subsection.
- (3) In this section, “controlled place” means a place in, under or over—
  - (a) the territorial sea, or
  - (b) waters in a Gas Importation and Storage Zone.

##### *Licensing*

#### **18 Licences**

- (1) The licensing authority may grant a licence to a person in respect of one or more activities within section 17(2).
- (2) The licensing authority is—
  - (a) in the case of a licence in respect of activities within section 17(2)(a) to (c) and a controlled place which is not in, under or over the territorial sea adjacent to Scotland, the Secretary of State,
  - (b) in the case of a licence in respect of such activities and a controlled place which is in, under or over that territorial sea, the Scottish Ministers,
  - (c) in the case of a licence in respect of such activities and a controlled place only part of which is in, under or over that territorial sea, either the Secretary of State or the Scottish Ministers, and

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- (d) in the case of a licence in respect of activities within section 17(2)(d), whichever of the Secretary of State or the Scottish Ministers licenses the activities for the purposes of which the installation is established or maintained;

and in this Chapter references to the licensing authority in relation to a licence falling within paragraph (c) are references to the person who grants the licence or, if the licence has not yet been granted, to whom the application for the licence was made.

- (3) The controlled place in respect of which a licence is granted may be determined by reference to the provisions of a Crown lease which has been or may be granted.
- (4) For this purpose a “Crown lease” means a lease of property forming part of the Crown Estate, or an authorisation to exercise rights forming part of that Estate (whether by virtue of section 1 or otherwise).

## 19 Requirements relating to grant of licences

- (1) Each licensing authority may by regulations make provision about the circumstances in which it may grant licences, including—
  - (a) provision about the requirements to be met by or in relation to an applicant, and
  - (b) provision about any other requirements which must be met for a licence to be granted.
- (2) Regulations under subsection (1)(a) may, in particular—
  - (a) prescribe the persons, or classes of persons, by whom an application for a licence may be made;
  - (b) prescribe the manner in which an application must be made;
  - (c) prescribe the information which an application must contain and any documents which must accompany it;
  - (d) require an application to be accompanied by a fee of an amount prescribed by, or determined in accordance with, the regulations;
  - (e) require an applicant, before a licence is granted, to make arrangements (whether by way of trust or otherwise) to provide financial security in respect of the applicant's future obligations relating to the activities under the licence (whether those obligations will or may arise under the licence or otherwise).

## 20 Terms and conditions

- (1) A licence may be granted on such terms and subject to such conditions as the licensing authority considers appropriate, subject to regulations under section 21.
- (2) Subject to such regulations, a licence may, in particular, include provision of a kind mentioned in subsections (3) to (7).
- (3) A licence may include—
  - (a) provision about the circumstances in which financial security (which may be provided by way of a trust or other arrangements) may be required in respect of the obligations mentioned in section 19(2)(e) (in addition to any security required by virtue of that section), and the form of any such security;
  - (b) provision about the circumstances in which financial security may be released (in whole or in part);

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- (c) provision enabling the licensing authority to review the licence in specified circumstances or at specified intervals;
  - (d) provision enabling the licensing authority, after consulting the licence holder, to modify the licence in specified circumstances (with or without the consent of the licence holder);
  - (e) provision preventing or enabling the licensing authority to prevent a licence holder, in specified circumstances, from carrying on an activity in respect of which the licence was granted;
  - (f) provision about closure of a carbon storage facility;
  - (g) provision about obligations of a licence holder between closure of a carbon storage facility and termination of the licence;
  - (h) provision about termination of the licence (which may include provision about financial arrangements).
- (4) The provisions of a licence may be expressed by reference to provision made in a Crown lease and, in particular, may provide—
- (a) for the commencement of the licence to be conditional upon the commencement of a Crown lease which has been or may be granted in respect of the controlled place to which the licence relates or any part of that place;
  - (b) for the period of the licence to be determined by reference to the period of such a Crown lease.
- (5) A licence may authorise, in such circumstances and subject to such conditions as are specified, the transfer of the licence to another person (or the inclusion of another person as a joint licence holder).
- (6) The provisions of a licence may include—
- (a) provision requiring the licence holder to obtain the prior written consent of the licensing authority or another person for specified acts or omissions;
  - (b) provision providing that any such consent may be given subject to conditions.
- (7) The conditions imposed on a consent by virtue of subsection (6)(b) may include conditions requiring, or otherwise providing for, the modification of the licence in such manner as the licensing authority considers appropriate.
- (8) In this section—
- “carbon storage facility” means a controlled place, or part of a controlled place, in which carbon dioxide has been stored pursuant to a licence;
  - “closure”, in relation to a carbon storage facility, means the point at which carbon dioxide has ceased to be added to the facility and the licence holder intends, or the licensing authority directs in accordance with the licence, that the cessation should be permanent;
  - “Crown lease” has the same meaning as in section 18;
  - “specified”, in relation to a licence, means specified in, or determined in accordance with, the licence.

## 21 Content of licences: regulations

- (1) Each licensing authority may make regulations about the terms and conditions of licences granted by it.

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- (2) Regulations under subsection (1) may specify that a licence must contain specified provisions or provisions of a specified description.

### *Enforcement*

## **22 Offence to carry on unlicensed activities**

- (1) It is an offence for a person to carry on an activity within section 17(2) at a controlled place unless, at the time the activity is carried on, that person—
- (a) has a licence for the carrying on of the activity at that place, or
  - (b) is carrying on the activity on behalf of a person who has such a licence.
- (2) It is an offence for a person to cause or permit another person to commit the offence in subsection (1).
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) If the activity constituting the offence falls within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—
- (a) the reference to £50,000 were a reference to the statutory maximum, and
  - (b) the reference to imprisonment were omitted.

## **23 Offences relating to licences**

- (1) An offence is committed by a licence holder if—
- (a) a thing is done for which the licence specifies that the prior consent of the licensing authority or any other person is required, without that consent first having been obtained;
  - (b) such a thing is done in circumstances where that consent was obtained subject to conditions and those conditions have not been satisfied;
  - (c) the licence holder fails to keep records, give a notice or make a return or report, in accordance with the provisions of the licence;
  - (d) the licence holder breaches any other provision of the licence which is specified, or of a description specified, in an order made by the licensing authority.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under subsection (1) is liable—
- (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (4) If an offence under subsection (1) relates to an activity within section 17(2)(c), or relates to the establishment or maintenance of an installation for the purposes of an activity mentioned in that provision, subsection (3) has effect as if—

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- (a) the reference to £50,000 were a reference to the statutory maximum, and
  - (b) the reference to imprisonment were omitted.
- (5) It is an offence for a person to make a statement which the person knows to be false, or recklessly to make a statement which is false, in order to obtain—
- (a) a licence, or
  - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (6) It is an offence for a person to fail to disclose information which the person knows, or ought to know, to be relevant to an application for—
- (a) a licence, or
  - (b) the consent of the licensing authority or any other person for the purposes of any requirement imposed by virtue of section 20(6).
- (7) A person guilty of an offence under subsection (5) or (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **24 Licensing authority's power of direction**

- (1) This section applies if a licence holder fails to comply with any provision of the licence.
- (2) The licensing authority may direct the licence holder to take steps which the licensing authority considers necessary or appropriate to comply with the provision within a period specified in the direction.
- (3) The licensing authority must consult the licence holder before giving a direction under subsection (2).
- (4) If the licence holder fails to comply with a direction under subsection (2), the licensing authority may—
  - (a) comply with the direction on behalf of the licence holder, or
  - (b) make arrangements for another person to do so.
- (5) A person taking action by virtue of subsection (4) may—
  - (a) do anything which the licence holder could have done, and
  - (b) recover from the licence holder any reasonable costs incurred in taking the action.
- (6) A person (“P”) liable to pay any sum by virtue of subsection (5)(b) must also pay interest on that sum for the period beginning with the day on which the person taking action by virtue of subsection (4) notified P of the sum payable and ending with the date of payment.
- (7) The rate of interest payable in accordance with subsection (6) is a rate determined by the licensing authority as comparable with commercial rates.
- (8) The licence holder must provide a person taking action by virtue of subsection (4) with such assistance as the licensing authority may direct.
- (9) The power to give a direction under this section is without prejudice to any provision made in the licence with regard to the enforcement of any of its provisions.

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## **25 Failure to comply with a direction under section 24**

- (1) It is an offence for a person to fail to comply with a direction under section 24, unless the person proves that due diligence was exercised in order to avoid the failure.
- (2) A person guilty of an offence under subsection (1) is liable—
  - (a) on summary conviction, to a fine not exceeding £50,000, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

## **26 Injunctions restraining breaches of section 17(1)**

- (1) Where the Scottish Ministers consider it necessary or expedient to restrain any actual or apprehended breach of section 17(1) in relation to a controlled place in, under or over the territorial sea adjacent to Scotland, they may apply to the Court of Session for an interdict.
- (2) Where the Secretary of State considers it necessary or expedient to restrain any other actual or apprehended breach of section 17(1), the Secretary of State may apply—
  - (a) to the High Court for an injunction, or
  - (b) to the Court of Session for an interdict.
- (3) An application may be made under this section whether or not the applicant has exercised or is proposing to exercise any of the other powers under this Chapter.
- (4) On an application under this section, the Court of Session may grant such an interdict, or the High Court may grant such an injunction, as it thinks appropriate for the purpose of restraining the breach.
- (5) Rules of court may provide for an injunction or interdict to be issued against a person whose identity is unknown.

## **27 Inspectors**

- (1) The Secretary of State may appoint persons to act as inspectors to assist in carrying out the functions of the Secretary of State under this Chapter.
- (2) The Secretary of State may make payments, by way of remuneration or otherwise, to inspectors appointed under this section.
- (3) The Secretary of State may make regulations about—
  - (a) the powers and duties of inspectors appointed under this section;
  - (b) the powers and duties of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter;
  - (c) the facilities and assistance to be accorded to persons mentioned in paragraph (a) or (b).
- (4) The powers conferred by virtue of subsection (3) may include powers of a kind specified in section 108(4) of the Environment Act 1995 (c. 25) (powers of entry, investigation, etc).
- (5) Any regulations under this section may provide for the creation of offences which are punishable—

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- (a) on summary conviction by a fine not exceeding the statutory maximum or such lesser amount as is specified in the regulations, and
- (b) on conviction on indictment by a fine.

- (6) This section applies in relation to the Scottish Ministers and the functions of the Scottish Ministers under this Chapter as it applies in relation to the Secretary of State and the functions of the Secretary of State under this Chapter.

## **28 Criminal proceedings**

- (1) Proceedings for a relevant 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.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (restriction on prosecutions) does not apply to any proceedings for a relevant offence.
- (3) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in England and Wales except—
  - (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for a relevant offence alleged to have been committed in a controlled place may not be instituted in Northern Ireland except—
  - (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In the application of subsection (3) or (4) to an offence created by regulations under section 27—
  - (a) the words “alleged to have been committed in a controlled place” are to be omitted, and
  - (b) the references to a person authorised by the Secretary of State are to be read as references to an inspector appointed under that section.
- (6) In this section “relevant offence” means an offence under this Chapter or created by regulations under section 27.

### *Registration*

## **29 Requirement for public register**

- (1) The Secretary of State must maintain a register containing prescribed information relating to licences.
- (2) Information is not to be included in the register if—
  - (a) the Secretary of State thinks that disclosure of the information would be contrary to the interests of national security, or
  - (b) the licensing authority thinks that disclosure of the information would prejudice to an unreasonable degree a person's commercial interests.
- (3) Information excluded from the register by virtue of subsection (2)(b) is treated, subject to subsection (4), as ceasing to prejudice a person's commercial interests

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at the end of the period of 4 years beginning with the date on which the licensing authority made the decision to exclude it.

- (4) The licensing authority may, on the application of the person whose commercial interests are affected, decide whether the information should be included in the register at the end of the period mentioned in subsection (3) or should continue to be excluded.
- (5) Where information of any description is excluded from the register by virtue of subsection (2)(b), a statement is to be included in the register indicating the existence of information of that description.
- (6) The Secretary of State must—
  - (a) secure that the register maintained under this section is available for inspection by the public free of charge, and
  - (b) afford to members of the public facilities for obtaining copies of entries, on payment of a fee.
- (7) In this section “prescribed” means prescribed by regulations made by the Secretary of State.

#### *Abandonment of offshore installations*

### **30 Abandonment of installations**

- (1) Part 4 of the Petroleum Act 1998 (c. 17) (“the 1998 Act”) applies in relation to a carbon storage installation as it applies in relation to an offshore installation within the meaning given by section 44 of the 1998 Act, subject to subsections (2) and (4).
- (2) In relation to a carbon storage installation established or maintained at a controlled place under a licence granted by the Scottish Ministers—
  - (a) the functions conferred on the Secretary of State by Part 4 of the 1998 Act are exercisable by the Scottish Ministers rather than the Secretary of State (and, accordingly, the reference in section 39(6) of the 1998 Act to either House of Parliament is to be read as a reference to the Scottish Parliament), and
  - (b) the Scottish Ministers may make regulations providing that that Part applies with such other modifications as may be specified in the regulations.
- (3) For the purposes of subsection (2), orders under section 33(1) are to be disregarded and installations used for a purpose ancillary to getting petroleum (within the meaning of section 1 of the 1998 Act) are not to be treated as carbon storage installations.
- (4) In relation to any other carbon storage installation, the Secretary of State may make regulations providing that Part 4 of the 1998 Act applies in relation to such an installation with such modifications as may be specified in the regulations.
- (5) In this section, “carbon storage installation” means an installation established or maintained for the purposes of an activity mentioned in section 17(2)(a), (b) or (c).

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### *Termination of the licence*

#### **31 Termination of licence: regulations**

- (1) The licensing authority may by regulations make provision—
  - (a) about the circumstances in which a licence may be terminated;
  - (b) imposing obligations on the licensing authority in respect of a carbon storage facility on or after the termination of a licence relating to the facility.
- (2) Regulations under this section may, in particular, make provision about financial arrangements to be made in relation to a closed carbon storage facility on or after the termination of a licence relating to the facility.
- (3) A licence has effect subject to any regulations under this section.

### *Miscellaneous*

#### **32 Safety zones**

Sections 21, 23 and 24 of the Petroleum Act 1987 (c. 12) (safety zones) apply in relation to a carbon storage installation as they apply in relation to an installation within section 21(1) of that Act.

#### **33 Enhanced petroleum recovery: power to make orders**

- (1) The use of carbon dioxide, in a controlled place, for a purpose ancillary to getting petroleum is to be regarded as—
  - (a) an activity within section 17(2), or
  - (b) the storage of gas for the purposes of section 1(3)(b),
 only in the circumstances specified by the Secretary of State by order.
- (2) Subsection (1) and orders made under it are without prejudice to Part 1 of the Petroleum Act 1998 (c. 17).
- (3) An order under subsection (1) may provide that the use of carbon dioxide, in a designated place, for a purpose ancillary to getting petroleum is to be regarded, for the purposes of this Chapter, as the use of carbon dioxide in a controlled place for such a purpose.
- (4) A designated place means a place designated by the order which is a place in, under or over waters in an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29), other than waters in a Gas Importation and Storage Zone.
- (5) In this section “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17).

#### **34 Power of Secretary of State etc to transfer functions**

- (1) The Secretary of State may by order transfer to a public body any function conferred on the Secretary of State by or under this Chapter, other than a power to make regulations or an order.

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- (2) A function transferred by an order under subsection (1) reverts to the Secretary of State if the order is revoked.
- (3) An order under subsection (1) may—
  - (a) transfer different functions to different bodies;
  - (b) transfer functions to a body in respect of all activities within section 17(2) or only specified activities;
  - (c) transfer the same function to different bodies in respect of different activities;
  - (d) transfer functions to different bodies in respect of different places.
- (4) An order under subsection (1) may—
  - (a) provide for the Secretary of State to make payments to a body to which a function has been transferred in respect of the body's expenditure in connection with the exercise of the function;
  - (b) require any fee paid to such a body under this Chapter to be paid into the Consolidated Fund;
  - (c) make such modifications of section 188 of the Energy Act 2004 (c. 20) (power to impose charges to fund energy functions), or any regulations made under that section, as the Secretary of State considers appropriate in consequence of the transfer of a function by virtue of this section.
- (5) The Secretary of State may give a direction to a body to which functions have been transferred under subsection (1) about—
  - (a) whether, or in what circumstances, a function specified in the direction is to be carried out;
  - (b) the manner in which a function specified in the direction is to be carried out.
- (6) A direction under subsection (5) may be general or specific.
- (7) The Secretary of State may not give a direction under subsection (5) without first consulting the body to which the Secretary of State proposes to give the direction.
- (8) This section applies in relation to the Scottish Ministers and any functions conferred on them by or under this Chapter as it applies in relation to the Secretary of State and any functions conferred on the Secretary of State by or under this Chapter, except that—
  - (a) in its application to the Scottish Ministers the reference in subsection (4) (b) to the Consolidated Fund is to be read as a reference to the Scottish Consolidated Fund, and
  - (b) the reference in that subsection to section 188 of the Energy Act 2004 (c. 20) is to be read as a reference to that section as applied and modified by subsection (12) (inserted by paragraph 13(e) of Schedule 1 to this Act).

### *Interpretation*

## **35 Chapter 3: interpretation**

- (1) In this Chapter—
  - “carbon storage facility” has the meaning given by section 20(8);
  - “carbon storage installation” has the meaning given by section 30(5);

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“closure”, in relation to a carbon storage facility, has the meaning given by section 20(8);

“controlled place” has the meaning given by section 17(3);

“Gas Importation and Storage Zone” means an area designated under section 1(5);

“installation” includes any floating structure or device maintained on a station by whatever means;

“licence” means a licence granted under section 18(1), and “licence holder” is to be construed accordingly;

“licensing authority” has the meaning given by section 18(2).

(2) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this Chapter if, or to the extent that, the Order is expressed to apply—

- (a) by virtue of this subsection, for the purposes of this Chapter, or
- (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

## CHAPTER 4

### GENERAL PROVISIONS ABOUT GAS IMPORTATION AND STORAGE

#### **36 Chapters 2 and 3: consequential amendments**

Schedule 1 contains amendments relating to Chapters 2 and 3.

## PART 2

### ELECTRICITY FROM RENEWABLE SOURCES

#### *The renewables obligation*

#### **37 The renewables obligation**

For sections 32 to 32C of the Electricity Act 1989 (c. 29) substitute—

##### **“32 The renewables obligation**

- (1) The relevant minister may make a renewables obligation order.
- (2) “The relevant minister” means—
  - (a) in the case of Scotland, the Scottish Ministers,
  - (b) in any other case, the Secretary of State.
- (3) In subsection (2) “Scotland” includes—
  - (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, and

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- (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004 (areas in relation to which Scottish Ministers have functions).
- (4) A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a “designated electricity supplier”).
- (5) The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified.
- (6) The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain.
- (7) Subsection (6) is subject to sections 32A to 32M.

### **32A Further provision about the renewables obligation**

- (1) A renewables obligation order may make provision generally in relation to the renewables obligation.
- (2) A renewables obligation order may, in particular, specify—
  - (a) how the number of renewables obligation certificates required to be produced by an electricity supplier in respect of the amount of electricity supplied by it to customers in the relevant part of Great Britain during a specified period is to be calculated;
  - (b) different obligations for successive periods of time;
  - (c) that renewables obligation certificates issued in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,are to count towards discharging an electricity supplier's obligation only up to a specified number, or a specified proportion, of the certificates required to be produced to discharge the obligation;
  - (d) that a specified number, or a specified proportion, of the renewables obligation certificates produced by an electricity supplier when discharging its renewables obligation must be certificates in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating station,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances;
  - (e) how the amount of electricity supplied by an electricity supplier to customers in the relevant part of Great Britain during a specified period is to be calculated;

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- (f) that specified information, or information of a specified nature, is to be given to the Authority;
  - (g) the form in which such information is to be given and the time by which it is to be given.
- (3) A renewables obligation certificate may count once only towards the discharge of the renewables obligation.
- (4) Except as provided by a renewables obligation order, a renewables obligation certificate counts towards discharging the renewables obligation regardless of whether the order under which it is issued is made by the Secretary of State or the Scottish Ministers.
- (5) A renewables obligation order may specify that the only renewables obligation certificates which count towards discharging the renewables obligation are certificates which are issued—
  - (a) in respect of electricity supplied to customers in the relevant part of Great Britain, or
  - (b) in respect of electricity used in a permitted way (within the meaning of section 32B(9) and (10)) in that part of Great Britain.
- (6) A renewables obligation order may, in relation to any specified period (“the current period”)—
  - (a) provide that renewables obligation certificates in respect of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that renewables obligation certificates in respect of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in paragraph (a) or (b);
  - (e) specify a maximum proportion, or maximum number of, the renewables obligation certificates issued in respect of electricity supplied in any period which may be counted towards discharging the renewables obligation for a different period.
- (7) For the purposes of subsection (6) a certificate which certifies that electricity has been used in a permitted way (within the meaning of section 32B(9) and (10)) in a particular period is to be treated as if it were a certificate which certifies that electricity has been supplied in that period.

### **32B Renewables obligation certificates**

- (1) A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a renewables obligation certificate”) to—
  - (a) the operator of a generating station,
  - (b) an electricity supplier or a Northern Ireland supplier, or
  - (c) if the order so provides, a person of any other description specified in the order.

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- (2) A renewables obligation certificate is to certify—
  - (a) the matters within subsection (3) or (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6), (7) or (8), the matters within that subsection.
- (3) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (4) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, 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 by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (6) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (7) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and

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- (b) that the electricity has been used in a permitted way.
- (9) For the purposes of subsections (7) and (8), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
  - (a) it is used in one of the ways mentioned in subsection (10), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (10) Those ways are—
  - (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraph (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or
    - (ii) as respects part, as mentioned in one of the other paragraphs and as respects the remainder as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and as respects the remainder by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (11) For the purposes of subsection (10)(b) electricity is supplied through a private wire network if it is conveyed to premises by a system which is used for conveying electricity from a generating station in circumstances where—
  - (a) the operator of the generating station is exempt from section 4(1)(c) and does not hold a supply licence, and
  - (b) the electricity is supplied to one or more customers—
    - (i) by the operator directly, or
    - (ii) by a person to whom the operator supplies the electricity, being a person who is exempt from section 4(1)(c) and does not hold a supply licence.
- (12) In this section “generating station”—
  - (a) in the case of an order made by the Scottish Ministers, means a generating station which is situated in Scotland;
  - (b) in the case of an order made by the Secretary of State, means a generating station which is not situated in Scotland.
- (13) For this purpose “Scotland” is to be construed in accordance with section 32(3).

### **32C Section 32B: supplemental provision**

- (1) A renewables obligation order may provide—
  - (a) that no renewables obligation certificates are to be issued in respect of electricity generated in specified cases or circumstances, or

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- (b) that renewables obligation certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
  - (a) electricity generated using specified descriptions of renewable sources,
  - (b) electricity generated by specified descriptions of generating station, or
  - (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—
  - (a) provision about how the proportion is to be determined;
  - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
  - (c) provision authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
    - (ii) for the results of that analysis to be made available to the Authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
  - (a) partly by renewable sources, and
  - (b) partly by fossil fuel (other than waste which constitutes a renewable source),only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A renewables obligation order may specify—
  - (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of renewables obligation certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequence that no certificates are to be issued in respect of any of the electricity generated by that generating station during that period.
- (7) A renewables obligation order may specify circumstances in which the Authority may revoke a renewables obligation certificate before its production for the purposes of the renewables obligation.
- (8) A renewables obligation order must—
  - (a) prohibit the issue of a renewables obligation certificate certifying matters within section 32B(4) or (6) 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

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the certificate and its production for the purposes of the renewables obligation.

- (9) References in section 32B and this section to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.

### **32D Amounts of electricity specified in certificates**

- (1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a renewables obligation order by virtue of subsection (1).
- (4) Before making any banding provision, the relevant minister must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c. 17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;
  - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, a Community obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—

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- (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the relevant minister, no subsequent order containing such provision may be made by that minister except following a review held by virtue of subsection (8).
- (8) A renewables obligation order—
  - (a) may authorise the relevant minister to review the banding provision at such intervals as are specified in or determined in accordance with the order, and
  - (b) may authorise the relevant minister to review the whole or any part of the banding provision at any time when that minister is satisfied that one or more of the specified conditions is satisfied.

### **32E Section 32D: transitional provision and savings**

- (1) This section applies where a renewables obligation order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—
  - (a) the electricity generated by generating stations of such a description as may be specified, or
  - (b) so much of that electricity as may be determined in accordance with the order.
- (3) For the purposes of subsection (2) “pre-commencement order” means an order made under section 32 before the coming into force of this section.
- (4) Subsection (6) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (5) The requirements specified under subsection (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the Secretary of State the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the Secretary of State interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined by the Secretary of State, and
  - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.

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- (7) If the grant in respect of which an amount falls to be paid under paragraph (a) or (b) of subsection (6) was paid by the Scottish Ministers, the references in those paragraphs to the Secretary of State are to be read as references to those Ministers.
- (8) For the purposes of subsection (6)—
  - (a) “the repayment date” means the date specified in or determined in accordance with the order, and
  - (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;
 and, for the purposes of provision made under that subsection, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.
- (9) In this section “statutory grant” means—
  - (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act.
- (10) This section is without prejudice to section 32K(1)(b) (power for renewables obligation order to include transitional provision and savings).

### **32F Use of renewables obligation certificates issued in Northern Ireland**

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

### **32G Payment as alternative to complying with renewables obligation order**

- (1) A renewables obligation order may provide—
  - (a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and
  - (b) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day 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 the late payment period.

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- (2) The order may make provision—
- (a) as to the sum which for the purposes of subsection (1) is to correspond to a renewables obligation certificate,
  - (b) 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 last discharge day;
  - (c) for different sums or rates falling within paragraph (a) or (b) in relation to different periods;
  - (d) for different such sums or rates in relation to electricity generated in different cases or circumstances specified in the order (including those of a kind referred to in section 32A(2)(c));
  - (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order.
- (3) The method specified under subsection (2)(e) may, in particular, refer to a specified scale or index (as it may have effect from time to time) or to other specified data of any description.
- (4) A renewables obligation order 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 last discharge day) 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.
- (5) A renewables obligation order may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—
- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
  - (b) is of a description so specified or determined,
- must by the time and in the circumstances so specified or determined make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.
- (6) A renewables obligation order may not by virtue of subsection (5) 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 (4) 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

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in relation to contraventions of Northern Ireland obligations for that period.

- (7) The provision that may be made by virtue of subsection (5) 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 the person were a licence holder.
- (8) References in this section to an electricity supplier's renewables obligation include references to its renewables obligation in relation to a particular period.
- (9) For the purposes of this section, 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 if, and to the extent that, the Authority would have received more by way of discharge payments if every renewables obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (10) For the purposes of this section 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, that authority would have received more by way of discharge payments if every Northern Ireland obligation for that period, so far as not otherwise discharged, had been discharged by payment.
- (11) In this section—
- “discharge payment”, in relation to a period, means—
    - (a) a payment by virtue of subsection (1)(a) 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 subsection (1)(b) 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 last discharge day, 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;
  - “last discharge day” means the day specified as the day by which renewables obligation certificates must be produced for the purposes of section 32(6);
  - “late payment period” means such period beginning with the last discharge day as may be specified;
  - “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

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- (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.

### **32H Allocation of amounts to electricity suppliers**

- (1) The amounts received by the Authority by virtue of section 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.
- (2) Subsection (1) does not apply to those amounts to the extent that they are used by the Authority under section 32I.
- (3) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.
- (4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under section 32G(1)(b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under section 32I or already paid under subsection (1)) is less than an amount specified in the order.
- (5) The references in this section to electricity suppliers include references to Northern Ireland suppliers.

### **32I Costs of the Authority and the Northern Ireland authority**

- (1) A renewables obligation order may provide for amounts received by the Authority by virtue of section 32G to be used by the Authority—
  - (a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under sections 32 to 32M, or
  - (b) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under Articles 52 to 55 of the Energy (Northern Ireland) Order 2003.
- (2) A renewables obligation order—
  - (a) may exclude amounts of a specified description from being used as mentioned in subsection (1);
  - (b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

### **32J Information**

- (1) A renewables obligation order may provide for the Authority to require—
  - (a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation;

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- (b) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.
- (2) That information must be given to the Authority in whatever form it requires.
- (3) A renewables obligation order may—
  - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the Authority to postpone the issue of certificates under section 32B to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
  - (e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.
- (4) The Authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

### **32K Renewables obligation order: general provision**

- (1) A renewables obligation order may—
  - (a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;
  - (b) make transitional provision and savings;
  - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
  - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision about the treatment of certificates issued under section 32B before the substitution of that section by section 37 of the Energy Act 2008.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
  - (a) different provision in relation to different suppliers;
  - (b) different provision in relation to generating stations of different descriptions;
  - (c) different provision in relation to different localities.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.

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### **32L Renewables obligation orders: procedure**

- (1) Before making a renewables obligation order, the relevant minister must consult—
  - (a) the Authority,
  - (b) the Council,
  - (c) the electricity suppliers to whom the proposed order would apply,
  - (d) such generators of electricity from renewable sources as the relevant minister considers appropriate, and
  - (e) such other persons, if any, as the relevant minister considers appropriate.
- (2) A renewables obligation order is not to be made by the Secretary of State unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) A renewables obligation order is not to be made by the Scottish Ministers unless a draft of the instrument containing it has been laid before and approved by a resolution of the Scottish Parliament.

### **32M Interpretation of sections 32 to 32M**

- (1) In this section and sections 32 to 32L—
  - “banding provision” is to be construed in accordance with section 32D(3);
  - “fossil fuel” means—
    - (a) coal,
    - (b) lignite,
    - (c) natural gas (within the meaning of the Energy Act 1976),
    - (d) crude liquid petroleum,
    - (e) petroleum products (within the meaning of that Act), or
    - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);
  - “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions are to be construed accordingly;
  - “Northern Ireland authority” means the Northern Ireland Authority for Utility Regulation;
  - “Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003;
  - “the relevant minister” has the meaning given by section 32;
  - “the relevant part of Great Britain” means—
    - (a) in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales);
    - (b) in the case of a renewables obligation order made by the Scottish Ministers, Scotland (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland);

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“the renewables obligation” is to be construed in accordance with section 32(4);

“renewables obligation certificate” is to be construed in accordance with section 32B;

“renewables obligation order” is to be construed in accordance with section 32;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a renewables obligation order, means specified in the order.

- (2) For the purposes of the definition of “renewable sources”, a renewables obligation order may make provision—
  - (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
    - (ii) for the results of that analysis to be made available to the Authority.
- (3) For the purposes of the definition of “the relevant part of Great Britain”, the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland.
- (4) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section and sections 32 to 32L if, or to the extent that, the Order is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (5) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the order or Order in Council is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (6) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or

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- (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (7) A renewables obligation order may make provision, for the purposes of sections 32 to 32L, about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
  - (b) to customers in the relevant part of Great Britain;
  - (c) to customers in Northern Ireland.”

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**Commencement Information**

- I1** [S. 37](#) partly in force; [s. 37](#) in force for certain purposes at Royal Assent, see [s. 110\(1\)\(a\)](#)  
**I2** [S. 37](#) in force at 1.4.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 3\(a\)](#) (with [art. 5](#))

**38 Section 37: supplemental provision**

- (1) In the case of an order made under section 32 of the Electricity Act 1989 (c. 29) after the commencement of section 37, the requirements of section 32L(1) of that Act (as substituted by section 37) may be satisfied by consultation undertaken before that commencement or the passing of this Act.
- (2) Where a NI amending order is made, the Secretary of State may, by order—
- (a) make consequential amendments to any reference to a provision of the NI Energy Order contained in sections 32 to 32M of the Electricity Act 1989 (as substituted by section 37);
  - (b) amend section 32K(2) of that Act (as so substituted) so as to extend it to certificates issued before the relevant time by the Northern Ireland Authority for Utility Regulation under provision included, by virtue of Article 54 of the NI Energy Order, in an order made under Article 52 of that Order.
- (3) In this section—
- “NI amending order” means an order under Article 56 of the NI Energy Order which (by virtue of section 40(2)) makes amendments to Part 7 of that Order to take account of any amendments made or proposed to be made by section 37;
- “NI Energy Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- “the relevant time” means the time when the first order made under Article 52 of the NI Energy Order by virtue of a NI amending order comes into force.

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**Commencement Information**

- I3** [S. 38](#) partly in force; [s. 38\(1\)](#) in force at Royal Assent, see [s. 110\(1\)\(a\)](#)  
**I4** [S. 38\(2\)](#) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(i\)](#)  
**I5** [S. 38\(3\)](#) in force at 7.3.2009 by [S.I. 2009/559](#), [art. 2](#)

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### 39 Existing savings relating to section 32 of the Electricity Act 1989

In section 67 of the Utilities Act 2000 (c. 27) (savings relating to section 32 of the Electricity Act 1989 etc), in subsection (1)(c) for “(as mentioned in that section) made pursuant to such an order” substitute “ made pursuant to such an order (or such arrangements as modified or replaced by virtue of an order under this section) ”.

#### Commencement Information

**I6** S. 39 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(ii)

### 40 The Northern Ireland renewables obligation

(1) In section 121 of the Energy Act 2004 (c. 20) (power of Gas and Electricity Markets Authority to act on behalf of Northern Ireland regulator)—

- (a) in subsection (1) for “Energy” substitute “ Utility ”,
- (b) in subsection (2) for “Articles 52” to the end substitute “ the Northern Ireland provisions. ”, and
- (c) after that subsection insert—

“(3) For this purpose “the Northern Ireland provisions” means—

- (a) Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (renewables obligations for Northern Ireland suppliers), and
- (b) any provision made (whether before or after the passing of the Energy Act 2008) by an order under Article 56 of the Energy (Northern Ireland) Order 2003 which amends Part 7 of that Order.”

(2) In Article 56(1) of the NI Energy Order (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 Electricity Act 1989 (c. 29) includes a reference to section 37 of this Act.

(3) In the case of an order under Article 52 of the NI Energy Order made by virtue of a NI amending order, the requirements of Article 52(6) of the NI Energy Order (consultation before making a renewables order) may be satisfied by consultation undertaken before the NI amending order came into force or the passing of this Act.

(4) In this section “NI amending order” and “NI Energy Order” have the same meaning as in section 38.

#### Commencement Information

**I7** S. 40 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iii)

### *Feed-in tariffs for small-scale generation of electricity*

### 41 Power to amend licence conditions etc: feed-in tariffs

(1) The Secretary of State may modify—

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- (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
  - (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity;
  - (b) requiring or enabling the holder of a distribution licence to make arrangements for the distribution of electricity generated by small-scale low-carbon generation;
  - (c) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a) or (b).
- (3) Modifications made by virtue of subsection (1) may include—
  - (a) provision requiring the holder of a supply licence to make a payment to a small-scale low-carbon generator, or to the Authority for onward payment to such a generator, in specified circumstances;
  - (b) provision specifying how a payment under paragraph (a) is to be calculated;
  - (c) provision for the level of payment under paragraph (a) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State;
  - (d) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator;
  - (e) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator;
  - (f) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times;
  - (g) provision specifying how a levy under paragraph (f) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State);
  - (h) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority.
- (4) In this section—
  - “Authority” means the Gas and Electricity Markets Authority;
  - “distribution licence” means a licence under section 6(1)(c) of the Electricity Act 1989 (c. 29);
  - “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
  - “plant” includes any equipment, apparatus or appliance;
  - “small-scale low-carbon generation” means the use, for the generation of electricity, of any plant—

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(a) which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in subsection (5), and

(b) the capacity of which to generate electricity does not exceed the specified maximum capacity;

“small-scale low-carbon generator” means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant;

“specified maximum capacity” means the capacity specified by the Secretary of State by order, which must not exceed 5 megawatts;

“supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29).

(5) The 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 with an electrical capacity of 50 kilowatts or less.

(6) The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in subsection (5).

(7) The power conferred by subsection (1)—

- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
- (b) may be exercised differently in different cases or circumstances;
- (c) includes a power to make incidental, supplemental, consequential or transitional modifications.

(8) Provision included in a licence by virtue of that power—

- (a) need not relate to the activities authorised by the licence;
- (b) may make different provision for different cases.

#### Commencement Information

**I8** S. 41 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iv)

## 42 Power to amend licence conditions etc: procedure

(1) Before making a modification, the Secretary of State must consult—

- (a) the holder of any licence being modified,
- (b) the Gas and Electricity Markets Authority, and
- (c) such other persons as the Secretary of State considers appropriate.

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- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section, “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section “modification” means a modification under section 41(1).

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**Commencement Information**

**19** [S. 42](#) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(iv\)](#)

### **43 Feed-in tariffs: supplemental**

- (1) A modification under section 41 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 Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 41(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority (“the Authority”) must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order—
  - (a) make provision conferring functions on the Authority or the Secretary of State (or both) in connection with the administration of any scheme established by virtue of section 41;
  - (b) make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State

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considers appropriate in consequence of provision made under paragraph (a) or section 41.

#### Commencement Information

**I10** S. 43 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iv)

VALID FROM 20/05/2009

### *Offshore electricity transmission*

#### **44 Offshore electricity transmission**

- (1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.
- (2) After section 6C insert—

#### **“6D Section 6C: supplemental provision**

- (1) The provision made by regulations under section 6C(1) may also include—
  - (a) provision requiring a person within subsection (2), in relation to a tender exercise, to make payments to the Authority, in prescribed circumstances, in respect of the Authority's tender costs in relation to the exercise;
  - (b) provision requiring a person within subsection (2)(a) (“the relevant person”) in prescribed circumstances—
    - (i) to pay a deposit of a prescribed amount to the Authority, or to provide the Authority with security in a form approved by it, or
    - (ii) to make arrangements for a person approved by the Authority to pay to the Authority such a deposit or provide it with such security,
 in respect of any liability which the relevant person has, or may in future have, by virtue of paragraph (a);
  - (c) provision requiring the owner of a regulated asset, in a case where a transitional tender exercise has been held, to make a payment of a prescribed amount to the Authority in respect of any costs incurred by the Authority in connection with any assessment of the costs which have been, or ought to have been, incurred in connection with that asset;
  - (d) provision about the times at which payments are to be made under regulations made by virtue of paragraph (a) or (c) or deposits or other forms of security are to be provided under regulations made by virtue of paragraph (b);
  - (e) provision about—
    - (i) the circumstances in which a payment made in accordance with regulations made by virtue of paragraph (a) is to be repaid (wholly or in part);

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- (ii) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
    - (iii) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with regulations made by virtue of paragraph (b) is to be released or forfeited (wholly or in part);
  - (f) provision about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this subsection, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (2) The persons within this subsection, in relation to a tender exercise, are—
- (a) the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held;
  - (b) any person who submits an application for the offshore transmission licence to which the tender exercise relates.
- (3) For the purposes of subsection (2)(a) a person makes a connection request when the person—
- (a) makes an application to the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
  - (b) before the coming into force of section 180 of the Energy Act 2004 (meaning of “high voltage line”), makes an application to the holder of a distribution licence (in accordance with any provision made by the licence) for an offer of connection to and use of a system in circumstances where the application is for connection to and use of that system by a system—
    - (i) which was a distribution system at the time the application was made (or would have been had it been in existence at that time), and
    - (ii) which consists (wholly or mainly) of electric lines of a nominal voltage of 132 kilovolts.
- (4) A person (“P”) is to be treated as within subsection (2)(a) if—
- (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (3)(a) or (b), and
  - (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (5) Where regulations are made by virtue of subsection (1)(a) or (b), regulations made by virtue of subsection (1)(e) must ensure that, as soon as reasonably practicable after a tender exercise is finished, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of—
- (a) any fees under section 6A(2) in respect of applications for the offshore transmission licence to which the tender exercise relates,
  - (b) any payments made in accordance with regulations made by virtue of subsection (1)(a) and not repaid, and

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- (c) the value of any security forfeited in accordance with regulations made by virtue of subsection (1)(e)(iii), does not exceed the Authority's tender costs.
- (6) Where regulations under section 6C—
  - (a) restrict the making of applications for offshore transmission licences, or
  - (b) operate so as to prevent an application from being considered or further considered, if the applicant does not meet one or more prescribed requirements,
 such regulations may make provision enabling a person to apply to the Authority for a decision as to the effect of any such restriction or requirement if the person were to make an application for such a licence.
- (7) Regulations made by virtue of subsection (6) may enable the Authority to charge a person who makes such an application a prescribed fee for any decision given in response to it.
- (8) In this section—
  - “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system—
    - (a) by means of which the transmission of electricity takes place, and
    - (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));
  - “offshore transmission licence” has the same meaning as in section 6C;
  - “prescribed” has the same meaning as in that section;
  - “regulated asset”, in relation to a tender exercise, means an asset which the person granted the offshore transmission licence requires in order to enable that person to comply with the obligations under the licence;
  - “successful bidder”, in relation to a tender exercise, means the person to whom, as a result of that exercise, the offshore transmission licence has been, or is to be, granted;
  - “tender costs”, in relation to a tender exercise, means—
    - (a) any costs incurred or likely to be incurred by the Authority for the purposes of the exercise, and
    - (b) such proportion as the Authority considers appropriate of the costs which—
      - (i) have been, or are likely to be, incurred by it under or for the purposes of section 6C or of regulations under that section, and
      - (ii) are not directly attributable to a particular tender exercise;
  - “tender exercise” means the steps taken in accordance with regulations under section 6C with a view to determining to whom a particular offshore transmission licence is to be granted;

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“transitional tender exercise” means a tender exercise in relation to which paragraph 1(1) of Schedule 2A applies.

- (9) Any sums received by the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.

#### **6E Property schemes in respect of offshore transmission licences**

Schedule 2A (which provides for property schemes in connection with grants of offshore transmission licences) shall have effect.”

- (3) In section 64 (interpretation of Part 1), after subsection (1) 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 wholly or partly in an area of GB internal waters, 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—
  - (i) used to convey electricity to a place in Scotland, or
  - (ii) constructed wholly or mainly for the purpose of conveying, to any other place, electricity generated by a generating station situated in an area mentioned in paragraph (a).

(1AA) In subsection (1A)(a) “GB internal 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 adjacent to Great Britain, but do not form part of that territorial sea.”

- (4) Before Schedule 3 insert the Schedule set out in Schedule 2 (property schemes).

### **PART 3**

#### **DECOMMISSIONING OF ENERGY INSTALLATIONS**

VALID FROM 06/04/2009

### **CHAPTER 1**

#### **NUCLEAR SITES: DECOMMISSIONING AND CLEAN-UP**

##### *Funded decommissioning programmes*

#### **45 Duty to submit a funded decommissioning programme**

- (1) This section applies where, on or after the day on which this section comes into force, a person applies for a nuclear site licence in respect of a site to which subsection (2) applies.

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- (2) This subsection applies to—
  - (a) a site on which the person intends to construct a nuclear installation for a purpose for which a licence under section 6(1)(a) of the Electricity Act 1989 (c. 29) or Article 10(1)(a) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I.)) (generating licences) is required, and
  - (b) a site to which this section previously applied by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.
- (3) The person must—
  - (a) give written notice of the application to the Secretary of State, and
  - (b) prepare and submit to the Secretary of State a funded decommissioning programme.
- (4) A funded decommissioning programme is a programme which—
  - (a) makes provision for the technical matters, and
  - (b) specifies how the implementation of that provision, so far as it relates to the designated technical matters, is to be financed.
- (5) The technical matters, in relation to a site, are—
  - (a) the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004 (c. 20)) during the operation of a nuclear installation on the site,
  - (b) the decommissioning of any relevant nuclear installation and the cleaning-up of the site, and
  - (c) activities preparatory to the matters mentioned in paragraph (b);and for the purposes of paragraph (a) a nuclear installation is not to be regarded as being operated at a time when it is being decommissioned.
- (6) The designated technical matters, in relation to a site, are—
  - (a) such of the matters within subsection (5)(a) or (c) as are specified by the Secretary of State by order, and
  - (b) the matters within subsection (5)(b).
- (7) The funded decommissioning programme must, in particular, contain—
  - (a) details of the steps to be taken under the programme in relation to the technical matters,
  - (b) estimates of the costs likely to be incurred in connection with the designated technical matters, and
  - (c) details of any security to be provided in connection with those costs.
- (8) A person who submits a programme must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect of the costs mentioned in subsection (9), at a time determined in accordance with such regulations.
- (9) The costs are those incurred by the Secretary of State in relation to the consideration of the programme, including, in particular, the costs of obtaining advice in relation to—
  - (a) the programme, or
  - (b) information required in relation to the programme in accordance with section 52(4).

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#### **46 Approval of a programme**

- (1) The Secretary of State may approve or reject a funded decommissioning programme submitted under section 45 in respect of a site.
- (2) The Secretary of State may approve a programme—
  - (a) with or without modifications, and
  - (b) unconditionally or subject to conditions.
- (3) A modification under subsection (2) may, in particular, impose obligations, or additional obligations, on a body corporate associated with the person who submitted the programme.
- (4) The Secretary of State's powers under subsections (1) to (3) must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (5) Before deciding whether to approve or reject a programme, the Secretary of State must consult each interested body about—
  - (a) the programme, and
  - (b) any modification which it is proposed to make, or any condition it is proposed to impose,so far as it relates to a function conferred on the interested body by or under an enactment.
- (6) “Interested body” means—
  - (a) the Health and Safety Executive,
  - (b) in relation to a funded decommissioning programme for a site in England and Wales, the Environment Agency, and
  - (c) in relation to a funded decommissioning programme for a site in Northern Ireland, the Department of the Environment for Northern Ireland.
- (7) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the following persons an opportunity to make written representations about the proposed modifications or conditions—
  - (a) the site operator;
  - (b) any other person with obligations under the programme;
  - (c) in the case of proposed modifications, any person who would have such obligations were the modifications made.
- (8) The Secretary of State may not reject a programme without informing the site operator of the reasons for doing so.
- (9) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

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#### **47 Prohibition on use of site in absence of approved programme**

- (1) This section applies where a person is required to submit a programme under section 45 by reason of an application made for a nuclear site licence in respect of a site.
- (2) It is an offence for the person to use or permit another person to use the site, by virtue of the licence, at a time when there is no programme submitted in accordance with that requirement and approved under section 46.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

#### *Modification of approved programmes*

#### **48 Modification of approved programme**

- (1) Where the Secretary of State has approved a funded decommissioning programme in respect of a site, a person mentioned in subsection (2) may—
  - (a) propose a modification of the programme, or
  - (b) propose a modification of the conditions to which the approval of the programme is subject.
- (2) Those persons are—
  - (a) the Secretary of State,
  - (b) the site operator, and
  - (c) any other person who has obligations under the programme (provided that the site operator consents to the proposed modification).
- (3) A proposal under subsection (1) may, in particular, propose—
  - (a) that obligations, or additional obligations, be imposed on a body corporate associated with the site operator, or
  - (b) the removal of obligations imposed on a body corporate which is or was so associated.
- (4) In subsection (1)(b) “modification of the conditions” includes the imposition of conditions where the programme was approved unconditionally.

#### **49 Procedure for modifying approved programme**

- (1) This section applies in relation to a proposal for the modification of an approved funded decommissioning programme, or of the conditions, under section 48 (but is subject to regulations under section 50).
- (2) The proposal must be made by notice in writing given—
  - (a) if the proposal is made by the Secretary of State, to the site operator, and
  - (b) in any other case, to the Secretary of State.
- (3) Where a proposal is made, the site operator must pay to the Secretary of State such fee as may be determined in accordance with regulations under section 54, in respect

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of the costs mentioned in subsection (4), at a time determined in accordance with such regulations.

- (4) The costs are those incurred by the Secretary of State in relation to the consideration of the proposal, including, in particular, the costs of obtaining advice in relation to—
- (a) the proposal, or
  - (b) information required in relation to the proposal in accordance with section 52(4).
- (5) Where the Secretary of State makes the proposal, the following persons must be given the opportunity to make written representations about the proposal—
- (a) the site operator;
  - (b) any other person with obligations under the programme;
  - (c) any person who would have such obligations if the proposed modification were made.
- (6) The Secretary of State must—
- (a) decide whether the proposed modification is to be made, and
  - (b) give notice of the decision, and the reasons for it, to every person who has obligations under the approved funded decommissioning programme, and
  - (c) if the decision is to make the modification, give such notice to any other person who will have such obligations by reason of the modification.
- (7) The Secretary of State's power under subsection (6)(a) must be exercised with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).
- (8) Before deciding whether the proposed modification is to be made, the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the modification relates to a function conferred on the interested body by or under an enactment.

## **50 Power to disapply section 49**

- (1) The Secretary of State may make regulations disapplying section 49 in relation to modifications which—
- (a) are proposed by a person within section 48(2) (other than the Secretary of State), and
  - (b) are of a description specified by the regulations.
- (2) Before making regulations under subsection (1), the Secretary of State must consult—
- (a) the Health and Safety Executive,
  - (b) the Environment Agency, and
  - (c) the Department of the Environment for Northern Ireland,
- in so far as the regulations relate to a function conferred on the body by or under an enactment.
- (3) The regulations may, in particular—
- (a) describe a modification by reference to its financial consequences;
  - (b) specify that, in determining whether a modification is of a specified description or not, the cumulative financial effect of all modifications, or all

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modifications of a specified class, within a specified period is to be taken into account.

- (4) In the case of a modification to which the regulations apply, the site operator must give notice of the modification to the Secretary of State in such manner as may be specified in the regulations.

## **51 Time when modification takes effect**

- (1) This section applies where, in the case of an approved funded decommissioning programme, a modification is made of the programme or of the conditions to which its approval is subject.
- (2) The modification does not take effect until the relevant time, and from that time this Chapter has effect—
- (a) in the case of a modification of the programme, as if the programme had been approved by the Secretary of State under section 46 in the modified form;
  - (b) in the case of a modification of the conditions to which the approval of the programme is subject, as if the Secretary of State had approved the programme under that section subject to the modified conditions.
- (3) “The relevant time” means—
- (a) in the case of a modification to which section 49 applies, the time specified in the notice given under section 49(6)(b) of the Secretary of State's decision that the modification is to be made, and
  - (b) in the case of a modification to which regulations under section 50 apply, the time specified in the notice of the modification given to the Secretary of State in accordance with section 50(4).
- (4) The time specified in a notice, as mentioned in subsection (3)(a) or (b), must not be earlier than the time the notice is given.

## *Information*

## **52 Provision of information and documents**

- (1) This section applies where either Condition A or Condition B is satisfied.
- (2) Condition A is that a funded decommissioning programme has been submitted to the Secretary of State under section 45 and the Secretary of State has not yet decided whether to approve or reject it.
- (3) Condition B is that—
- (a) a modification of a programme, or of the conditions subject to which a programme is approved, has been proposed in accordance with section 48,
  - (b) the modification is not one to which regulations under section 50(1) apply, and
  - (c) the Secretary of State has not yet decided whether the modification should be made.
- (4) The Secretary of State may by notice in writing require a person within subsection (5) —

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- (a) to produce documents, or documents of a description, specified in the notice, or
  - (b) to provide information, or information of a description, specified in the notice.
- (5) Those persons are—
  - (a) the site operator;
  - (b) any other person with obligations under the programme;
  - (c) in a case where Condition A is satisfied, any body corporate associated with the site operator and in relation to which the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme;
  - (d) in a case where Condition B is satisfied, any person who would have such obligations if the proposed modification were made.
- (6) A notice under subsection (4)—
  - (a) must specify the period within which the documents or information are to be provided or produced;
  - (b) may, in the case of information, require it to be provided in a manner or form specified in the notice.
- (7) This section applies only to information and documents the provision or production of which the Secretary of State considers necessary for the purpose of making the decision referred to in subsection (2) or (3).
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.
- (10) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

### **53 Power to review operation of programme**

- (1) This section applies where a funded decommissioning programme has been approved by the Secretary of State in relation to a site under section 46.
- (2) The Secretary of State may by notice in writing require information relating to the operation of the programme from—
  - (a) the site operator;
  - (b) any other person who has obligations under the programme.
- (3) A notice under subsection (2) may be given only for the purpose of enabling the Secretary of State to determine—
  - (a) whether the programme is being complied with;
  - (b) whether it will be possible for obligations under the programme arising at a future date to be complied with;

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- (c) whether the programme makes prudent provision for the technical matters (including the financing of the designated technical matters).
- (4) Subsection (5) applies if the Secretary of State has reason to believe (whether as a result of information obtained under this section or otherwise)—
  - (a) that the programme is not being complied with,
  - (b) that it will not be possible for an obligation under the programme arising at a future date to be complied with, or
  - (c) that the programme does not make prudent provision for the matters mentioned in subsection (3)(c).
- (5) The Secretary of State may by notice in writing require information from—
  - (a) the site operator,
  - (b) any other person who has obligations under the programme, or
  - (c) any body corporate associated with the site operator,
 for the purpose of enabling the Secretary of State to determine whether to make a proposal, or the nature of any proposal to be made, under section 48 in respect of the programme.
- (6) Where a notice under subsection (2) or (5) has been given, the Secretary of State may require the site operator to pay to the Secretary of State such fee in respect of costs incurred by the Secretary of State in obtaining advice in relation to the information as may be determined in accordance with regulations under section 54.
- (7) A fee under subsection (6) must be paid at a time determined in accordance with regulations under section 54.
- (8) If at any time it appears to the Secretary of State that a person has failed to comply with a notice under subsection (2) or (5), the Secretary of State may make an application to the High Court under this section.
- (9) If, on an application under this section, the High Court decides that the person has failed to comply with the notice, it may order the person to take such steps as it directs for securing that the notice is complied with.

#### *Regulations and guidance*

### **54 Nuclear decommissioning: regulations and guidance**

- (1) The Secretary of State may make regulations about—
  - (a) the preparation, content and implementation of funded decommissioning programmes,
  - (b) the modification of funded decommissioning programmes under sections 48 to 51, and
  - (c) the modification, under those sections, of the conditions subject to which funded decommissioning programmes are approved.
- (2) Regulations under this section may, in particular, make provision—
  - (a) about the technical matters in relation to sites to which section 45(2) applies;
  - (b) about the estimation of the costs likely to be incurred in connection with the designated technical matters in relation to such sites, and about the manner

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- in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
- (c) about the financing of those designated technical matters, including the security to be provided for the performance of obligations imposed in respect of those matters by virtue of programmes and the establishment and maintenance, for the purposes of such security, of trusts or other arrangements to hold and accumulate funds;
  - (d) about payments to a site operator or another person from funds so held or accumulated;
  - (e) for information prescribed, or of a description prescribed, by the regulations to be supplied to the Secretary of State by persons with obligations under programmes at such intervals, or on such occasions, as may be so prescribed;
  - (f) enabling the Secretary of State to charge a fee to a site operator in order to recover the costs of obtaining advice in relation to information supplied in accordance with regulations under paragraph (e);
  - (g) about how fees payable under this Chapter are to be determined;
  - (h) about when fees payable under this Chapter are to be paid.
- (3) Regulations under this section may include provision making it an offence to contravene specified provisions of the regulations.
- (4) Where regulations under subsection (3) create an offence, they must also make provision as to the mode of trial and punishment of offences; but—
- (a) any provision as to punishment on summary conviction must not authorise a fine exceeding the statutory maximum or imprisonment, and
  - (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (5) The Secretary of State may publish guidance about the preparation, content, modification and implementation of funded decommissioning programmes (including any matter mentioned in subsection (2)(a) to (e)).
- (6) The Secretary of State must publish guidance about factors which it may be appropriate to consider in deciding whether or not—
- (a) to approve a programme,
  - (b) to approve a programme with modifications or subject to conditions, or
  - (c) to make a proposed modification to a programme or the conditions subject to which it is approved.
- (7) When making a decision of a kind mentioned in subsection (6), the Secretary of State must have regard to the guidance for the time being in force under this section.
- (8) Before making regulations or publishing guidance under this section, the Secretary of State must consult—
- (a) the Health and Safety Executive,
  - (b) the Environment Agency, and
  - (c) the Department of the Environment in Northern Ireland,
- in so far as the regulations or guidance relate to functions conferred on them by or under an enactment.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the commencement of this section or the passing of this Act.

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- (10) The Secretary of State must lay before Parliament a copy of any guidance published under this section.
- (11) Guidance under this section may make different provision for different cases or circumstances.

## **55      Funded decommissioning programmes: verification of financial matters**

- (1) Regulations under section 54 may make provision enabling the Secretary of State to rely, in specified circumstances, on verification of financial matters by an independent third party.
- (2) Regulations may, in particular, provide that for the purposes of the Secretary of State's functions under this Chapter, the Secretary of State may—
  - (a) rely on estimates of costs verified by an independent third party in accordance with the regulations;
  - (b) rely on an independent third party's assessment of the prudence or otherwise of any provision made for the financing of the designated technical matters.

### *Protection of decommissioning funds*

## **56      Protection of security under approved programme**

- (1) This section applies where, in relation to a site to which section 45 applies, any security for the performance of obligations relating to the designated technical matters has been provided by a person (“the security provider”) by way of a trust or other arrangements, in accordance with an approved funded decommissioning programme.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (3) In this section “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) an insurance policy;
  - (e) a letter of credit.
- (4) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (5) For the purposes of subsection (4), no regard is to be had to so much of the Insolvency Act 1986 (c. 45), the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)) or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
  - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
  - (b) prevent or restrict their enforcement for the purposes of being so applied.

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## Enforcement

### 57 Offence to fail to comply with approved programme

- (1) It is an offence for a site operator or a body corporate associated with a site operator (a “relevant person”) to fail to comply with an obligation imposed on the relevant person by an approved funded decommissioning programme in respect of the site.
- (2) In proceedings against a person for an offence under this section, it is a defence for the person to prove that due diligence was exercised to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

### 58 Secretary of State's power of direction

- (1) This section applies where—
  - (a) a person fails to comply with an obligation imposed on the person by an approved funded decommissioning programme, or
  - (b) a person on whom obligations are imposed by such a programme has engaged in unlawful conduct which the Secretary of State thinks may affect the programme.
- (2) In this section—

“the defaulter” means a person to whom subsection (1)(a) or (b) applies, and

“unlawful conduct” means conduct which is unlawful under the criminal law of a part of the United Kingdom.
- (3) A person has engaged in unlawful conduct for the purposes of subsection (1) if—
  - (a) the person has been found guilty of the unlawful conduct by a court in a part of the United Kingdom,
  - (b) the period for an appeal against the conviction has expired, and
  - (c) if an appeal has been made, it has been withdrawn or finally determined.
- (4) The Secretary of State may direct the defaulter to take steps which the Secretary of State considers necessary or appropriate to comply with the obligation or remedy the effects of the unlawful conduct.
- (5) Before giving a direction under subsection (4), the Secretary of State must consult each interested body (within the meaning of section 46(6)) in so far as the direction relates to a function conferred on the interested body by or under an enactment.
- (6) If at any time it appears to the Secretary of State that the defaulter has failed to comply with a direction under subsection (4), the Secretary of State may make an application to the High Court under this section.
- (7) If, on an application under this section, the High Court decides that the defaulter has failed to comply with the direction, it may order the defaulter to take such steps as it directs for securing that the direction is complied with.

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## **59 Offence of further disclosure of information**

- (1) A person who discloses information obtained by virtue of a notice under section 52(4) or 53(2) or (5), or regulations under section 54(2)(e), is guilty of an offence unless the disclosure is permitted by this section.
- (2) The disclosure is permitted if—
  - (a) it is made with the consent of the person by or on behalf of whom the information was provided;
  - (b) it is made under section 63 or for the purposes of any other function of the Secretary of State under this Chapter;
  - (c) it is a disclosure of information obtained under section 63 by the Health and Safety Executive and it is made by the Executive for the purposes of its functions under the Nuclear Installations Act 1965 (c. 57);
  - (d) it is a disclosure of information obtained under that section by the Environment Agency or the Department of the Environment for Northern Ireland and it is made by the Agency or Department for the purposes of its functions under the Radioactive Substances Act 1993 (c. 12);
  - (e) it is required by or under an enactment.
- (3) A person guilty of an offence under this section 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 2 years or to a fine, or both.

## **60 Offence of supplying false information**

- (1) It is an offence for a person, knowingly or recklessly, to supply information which is false or misleading in a material respect to the Secretary of State in response to a requirement under this Chapter.
- (2) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

## **61 Restriction on prosecutions under this Chapter**

No proceedings for an offence under this Chapter (including an offence created by regulations under section 54) may be instituted except by the Secretary of State or—

- (a) in England and Wales, the Director of Public Prosecutions, or
- (b) in Northern Ireland, the Director of Public Prosecutions for Northern Ireland.

### *Miscellaneous*

## **62 Power to apply this Chapter to other nuclear installations**

- (1) The Secretary of State may, by order, modify section 45 so that it also applies where, on or after the day on which the order comes into force, a person applies for a nuclear site licence in respect of a site of a description specified in the order.

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- (2) The sites which fall within a description specified under subsection (1) must be—
  - (a) sites on which the person intends to construct a nuclear installation for a purpose connected with the generation of electricity, or
  - (b) sites in respect of which an obligation has previously arisen under section 45 by virtue of paragraph (a) and on which the person intends to operate a nuclear installation which was constructed for such a purpose.

### **63 Co-operation with other public bodies**

- (1) The Secretary of State may require a body within subsection (2) to provide the Secretary of State with such assistance as that body is reasonably able to give in connection with the performance by the Secretary of State of a function under this Chapter.
- (2) Those bodies are—
  - (a) the Health and Safety Executive;
  - (b) the Environment Agency;
  - (c) the Department of the Environment for Northern Ireland.
- (3) A body within subsection (2) may provide information to the Secretary of State if—
  - (a) the information relates to a person within subsection (5), and
  - (b) the Secretary of State or the body thinks that the information is relevant to a function of the Secretary of State under this Chapter.
- (4) The Secretary of State may provide information to a body within subsection (2) if—
  - (a) the information relates to a person within subsection (5), and
  - (b) the Secretary of State or the body thinks that the information is relevant to a function of the body in relation to the programme.
- (5) The persons are—
  - (a) a site operator, or another person, who has obligations under a funded decommissioning programme (whether or not the programme is approved),
  - (b) a body corporate which is associated with a site operator who has submitted a funded decommissioning programme if—
    - (i) the Secretary of State is considering making a modification under section 46 which, if made, would result in the body corporate having obligations under the programme, or
    - (ii) a proposal under section 48 has been made for a modification which, if made, would result in the body corporate having obligations under the programme, or
  - (c) in the case of subsection (3) only, a body corporate which is so associated and in relation to which the Secretary of State is considering whether to make a proposal of the kind mentioned in paragraph (b)(ii).
- (6) This section applies despite any statutory or other restriction on the disclosure of information.
- (7) Where a nuclear site licence has been applied for, but not yet granted, in respect of a site, references in this section to the site operator include references to the person who has applied for a nuclear site licence in respect of the site.

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## **64 Continuity of obligations**

- (1) This section applies where a person (“the former site operator”) ceases to hold a nuclear site licence in respect of a site.
- (2) This Chapter continues to apply to the former site operator as if it were the site operator in relation to the site.
- (3) But the Secretary of State may give notice to the former site operator releasing it from its obligations under—
  - (a) this Chapter, and
  - (b) an approved funded decommissioning programme in respect of the site.
- (4) A notice under subsection (3)—
  - (a) may relate to all the former site operator's obligations or only to specified obligations;
  - (b) may relate to the whole or part of a site;
  - (c) may relate to all nuclear installations on a site or only to specified nuclear installations;
  - (d) may be unconditional or subject to conditions.
- (5) The power conferred by subsection (3) applies in relation to any other person with obligations under a programme within subsection (3)(b) as it applies in relation to the site operator.
- (6) This section is without prejudice to the operation of this Chapter in relation to another person who applies for or is granted a nuclear site licence in respect of the site.

## **65 Amendment of Nuclear Installations Act 1965**

After section 1(3) of the Nuclear Installations Act 1965 (c. 57) (nuclear site licences) insert—

“(4) Subsection (1) is subject to section 47 of the Energy Act 2008 (prohibition on use of site in absence of approved funded decommissioning programme).”

## **66 Disposal of hazardous material**

- (1) Where the Secretary of State enters an agreement for, or in connection with, the disposal of relevant hazardous material by or on behalf of the Secretary of State, the agreement may provide for a fee to be paid to the Secretary of State.
- (2) The Secretary of State may not enter an agreement which provides for the payment of a fee unless the consent of the Treasury has been obtained in relation to the amount of the proposed fee.
- (3) The fee for which such an agreement provides may include—
  - (a) such amount as the Secretary of State considers prudent by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred in connection with the Secretary of State's obligations under the agreement in relation to the relevant hazardous material;
  - (b) an amount in respect of such proportion as the Secretary of State considers appropriate of the aggregate of—

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- (i) the relevant expenditure which has been, will or may be, incurred in connection with the design and construction of a repository in which material (including any hazardous material to which the agreement relates) is to be disposed of, and
- (ii) such amount as the Secretary of State considers it prudent to make allowance for by reason of any uncertainty which exists about the relevant expenditure which will or may be incurred as mentioned in sub-paragraph (i).

(4) In this section—

“hazardous material” has the meaning given by section 37 of the Energy Act 2004 (c. 20);

“relevant expenditure” means expenditure incurred by the Secretary of State, the Nuclear Decommissioning Authority or any other person;

“relevant hazardous material” means hazardous material which is, or is required to be, the subject of a funded decommissioning programme.

### *General*

## **67 Meaning of “associated”**

- (1) For the purposes of this Chapter, one body corporate is associated with another if one of them has a significant interest in the other or a third body corporate has a significant interest in both of them; and subsections (2) to (5) set out the circumstances in which one body corporate (“A”) has a significant interest in another (“B”).
- (2) Where B is a company, A has a significant interest in B if A possesses or is entitled to acquire—
  - (a) 20% or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise 20% or more of the votes exercisable in general meetings of B,
  - (c) such part of the issued share capital of B as would entitle A to 20% or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive 20% or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A has a significant interest in B if A—
  - (a) holds 20% or more of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove 20% or more of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, 20% or more of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.

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- (5) In any case, A has a significant interest in B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of this section, A has a significant interest in B, A shall be taken to possess—
  - (a) any rights and powers possessed by a person as nominee for A, and
  - (b) any rights and powers possessed by a body corporate which A controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).
- (7) In order to determine whether one body corporate controls another for the purposes of subsection (6)(b), subsections (2) to (5) and (6)(a) are to be applied, but as if—
  - (a) for “has a significant interest in” in each place there were substituted “controls”, and
  - (b) for “20%” in each place there were substituted “50%”.

## 68 Interpretation

In this Chapter—

“approved funded decommissioning programme” means a funded decommissioning programme approved under section 46;

“cleaning-up” and “decommissioning”, in relation to a site or installation, include the treatment, storage, transportation and disposal of hazardous material (within the meaning of section 37 of the Energy Act 2004) 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;

“the designated technical matters” has the meaning given by section 45;

“document” includes anything in which information is recorded in any form;

“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation;

“funded decommissioning programme” is to be construed in accordance with section 45;

“nuclear installation” has the meaning given by section 26 of the Nuclear Installations Act 1965 (c. 57);

“nuclear site licence” has the meaning given by that section;

“relevant nuclear installation”, in relation to a site, means a nuclear installation which is or is intended to be established on the site;

“site operator” means a person who holds a nuclear site licence in respect of a site;

“the technical matters” has the meaning given by section 45.

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VALID FROM 06/04/2009

## CHAPTER 2

### OFFSHORE RENEWABLES INSTALLATIONS

#### 69 Decommissioning notices relating to offshore renewable energy installations

- (1) The Energy Act 2004 (c. 20) is amended as follows.
- (2) In section 105(2) (notices), for “that person” substitute “—
  - (a) a person falling within subsection (1)(a), (b) or (c), or
  - (b) if a person to whom paragraph (a) applies is a body corporate, a body corporate associated with that person (subject to section 105A),”.
- (3) In section 105(3) (consents) for the words from the beginning to “proposals—” substitute—
  - “(3) Before requiring a person to submit a decommissioning programme in respect of proposals made by a person within paragraph (a) or (b) of subsection (1), the Secretary of State must be satisfied that at least one of the statutory consents required for giving effect to those proposals—”.
- (4) After section 105 (requirement to prepare decommissioning programme) insert—

#### “105A Section 105 notices: supplemental

- (1) The Secretary of State may not give a notice under section 105(2)(b) to a body corporate associated with a person (“the responsible person”) within section 105(1)(a), (b) or (c) unless the Secretary of State—
  - (a) has given a notice to the responsible person under section 105(2)(a), and
  - (b) is not satisfied that adequate arrangements (including financial arrangements) have been made by the responsible person to ensure that a satisfactory decommissioning programme will be carried out.
- (2) Subsection (1) does not apply if—
  - (a) there has been a failure to comply with a notice under section 105(2), or
  - (b) the Secretary of State has rejected a programme submitted in compliance with such a notice.
- (3) For the purposes of this section and section 105, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them, and subsections (4) to (8) set out the circumstances in which one body corporate (“A”) controls another (“B”).
- (4) Where B is a company, A controls B if A possesses or is entitled to acquire—
  - (a) one half or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,

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- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (5) Where B is a limited liability partnership, A controls B if A—
  - (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (6) In subsection (5)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (7) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (8) In determining whether, by virtue of subsections (4) to (7), A controls B, A is to be taken to possess—
  - (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).”
- (5) In section 108 (reviews of decommissioning programmes), after subsection (3) insert—
 

“(3A) A proposal under subsection (3)(b) may, in particular, be made in relation to a body corporate associated with a person who has a duty under section 109(1) (and for this purpose “associated” is to be construed in accordance with section 105A(3) to (8)).”

## 70 Security for decommissioning obligations

- (1) After section 110 of the Energy Act 2004 (c. 20) (failure to carry out decommissioning programme) insert—

### “110A Protection of funds held for purposes of decommissioning

- (1) This section applies where any security in relation to the carrying out of an approved decommissioning programme, or for compliance with the conditions of its approval, has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.

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- (3) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (4) For the purposes of subsection (3), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
  - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
  - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (5) In subsection (4) “enactment” includes an instrument made under an enactment.

#### **110B Section 110A: supplemental**

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
  - (a) the time when the information must be published, and
  - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State or a creditor of the security provider may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
  - “the protected assets” has the same meaning as in section 110A;
  - “security provider” means a person who has provided security in relation to which that section applies.
- (6) In subsections (3) and (4) references to “the court” are references—
  - (a) to the High Court, in relation to an application in England and Wales or Northern Ireland, or
  - (b) to the Court of Session, in relation to an application in Scotland.”
- (2) In section 114(2) of that Act (interpretation), in the definition of “security” after paragraph (c) insert—
  - “(ca) an insurance policy;”.

#### **71 Provision of information to Secretary of State**

After section 112 of the Energy Act 2004 (c. 20) (duty to inform Secretary of State) insert—

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### **“112A Power of Secretary of State to require information and documents**

- (1) The Secretary of State may by notice require a person within subsection (2) to provide the Secretary of State with such relevant information or documents as the Secretary of State may require in connection with the exercise of functions under this Chapter.
- (2) Those persons are—
  - (a) a person who has been, or may be, given a notice under section 105(2)(a) in relation to a relevant object,
  - (b) where a person falling within paragraph (a) is a body corporate, a body corporate associated with that person,
  - (c) a person not within paragraph (a) or (b) who by virtue of provision made under section 108(3)(b) is subject to the duty under section 109(1) in relation to a decommissioning programme relating to a relevant object.
- (3) Information or a document is “relevant” if it relates to—
  - (a) the place where the relevant object is or is to be situated,
  - (b) the relevant object,
  - (c) where the recipient of the notice is a body corporate falling within subsection (2)(c) or section 105(2)(a), details of an associated body corporate,
  - (d) the financial affairs of the recipient of the notice or, where the recipient is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), an associated body corporate,
  - (e) the security that the recipient proposes to provide in relation to the carrying out of a decommissioning programme relating to the relevant object or for the recipient's compliance with any conditions of the programme's approval, or
  - (f) where the recipient of the notice (“R”) is a body corporate falling within subsection (2)(c) or section 105(1)(a), (b) or (c), the name or address of any person whom R believes to be an associated body corporate.
- (4) But if a notice under subsection (1) requires information in connection with a function of the Secretary of State under section 107(1) or (4), the notice may require the provision of information or documents which the Secretary of State considers are necessary or expedient for the purpose of exercising those functions (whether or not they are of a kind specified in subsection (3)).
- (5) A notice under subsection (1) must specify the documents or information, or the description of documents or information, to which it relates.
- (6) Information or documents required to be provided under this section must be provided within such period as is specified in the notice under subsection (1).
- (7) In this section, “associated”, in relation to a body corporate, is to be construed in accordance with section 105A(3) to (8).

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- (8) A person who fails, without reasonable excuse, to comply with a notice under subsection (1) is guilty of an offence.
- (9) A person who discloses information obtained by virtue of a notice under this section is guilty of an offence unless the disclosure—
  - (a) is made with the consent of the person by or on behalf of whom the information was provided,
  - (b) is for the purpose of the exercise of the Secretary of State's functions under this Chapter, the Electricity Act 1989 or Part 4 of the Petroleum Act 1998, or
  - (c) is required by or under an enactment.”

## CHAPTER 3

### OIL AND GAS INSTALLATIONS

#### 72 Persons who may be required to submit abandonment programmes

- (1) Section 30 of the Petroleum Act 1998 (c. 17) (persons who may be required to submit programmes) is amended as follows.
- (2) In subsection (1)—
  - (a) after paragraph (b) insert—
    - “(ba) a person to whom subsection (5)(a) and (b) applied in relation to the installation, but who—
      - (i) transferred the right mentioned in that subsection to another person, and
      - (ii) has not obtained a consent required under the licence in relation to the transfer;”, and
  - (b) in paragraph (e) for “company” in each place substitute “ body corporate ”.
- (3) In subsection (2)(c) for “company” in each place substitute “ body corporate ”.
- (4) For subsection (5)(b) substitute—
  - “(b) either—
    - (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
    - (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation,”.
- (5) For subsection (8) substitute—
  - “(8) For the purposes of this section, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them; and subsections (8A) to (8D) set out the circumstances in which one body corporate (“A”) controls another (“B”).
  - (8A) Where B is a company, A controls B if A possesses or is entitled to acquire—
    - (a) one half or more of the issued share capital of B,
    - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,

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- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (8B) Where B is a limited liability partnership, A controls B if A—
  - (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (8C) In subsection (8B)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (8D) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.”
- (6) In subsection (9)—
  - (a) for “subsection (8)” substitute “ subsections (8) to (8D) ”, and
  - (b) for “company” in each place substitute “ body corporate ”.
- (7) In section 31 of that Act (notices: supplementary provision), before subsection (1) insert—
 

“(A1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a person (“P”) who, in relation to the installation, falls within paragraph (b) or (c) of section 30(1), if—

  - (a) P is not entitled to derive, and never has been entitled to derive, any financial or other benefit from any activity within section 30(6)—
    - (i) which has been or is carried on (or is intended to be carried on) from, by means of or on the installation, and
    - (ii) is an activity to which subsection (B1) applies, and
  - (b) P is not, and never has been, a person within section 30(1)(a), (ba), (d) or (e) in relation to the installation.
- (B1) This subsection applies to an activity if—
  - (a) where the activity is the exploitation or exploration of mineral resources, it relates to an oil field for which the installation is or is to be established or maintained;
  - (b) where the activity is the conveyance of minerals, the minerals are got, or to be got, from such an oil field;
  - (c) where the activity is the unloading, storage or recovery of gas, it relates to a controlled place (within the meaning of Chapter 2 or 3 of Part 1 of the Energy Act 2008) for which the installation is or is to be established or maintained;
  - (d) where the activity is the conveyance of gas being stored or recovered, the storage or recovery of the gas relates to such a controlled place;

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- (e) where the activity is within section 30(6)(c)—
  - (i) the installation is in an oil field in respect of which P has an interest, or
  - (ii) the installation is in a controlled place in respect of which P has a licence under Part 1 of the Energy Act 2008.
- (C1) For the purposes of subsection (B1)—
  - (a) “oil field” means an area which the appropriate authority (within the meaning of paragraph 1(2) of Schedule 1 to the Oil Taxation Act 1975) has determined to be an oil field for the purposes of Part 1 of that Act,
  - (b) P has an interest in an oil field if P is entitled to derive, or has at any time been entitled to derive, any financial or other benefit from activities within section 30(6) (other than paragraph (c)) carried on in the field.
- (D1) The Secretary of State may not give a notice under section 29(1) in relation to an offshore installation to a body corporate if—
  - (a) the body corporate falls within paragraph (e) of section 30(1) (and no other paragraph of that section), and
  - (b) the body corporate falls within that paragraph by reason only that it is associated (within the meaning given by section 30(8)) with a person to whom the Secretary of State may not give a notice in relation to the installation by virtue of subsection (A1).”
- (8) In section 34 of that Act (revision of programmes), after subsection (3) insert—

“(3A) A proposal that a person who is or has been within paragraph (b) or (c) of section 30(1) is to have a duty to secure that a programme is carried out may not be made if the Secretary of State would be prevented from giving a notice under section 29(1) to the person by virtue of section 31(A1) if the programme had not already been approved under this section.”

#### Commencement Information

**III** S. 72 in force at 26.1.2009 by S.I. 2009/45, art. 2(b)(i)

## 73 Financial resources etc

- (1) Section 38 of the Petroleum Act 1998 (c. 17) (information and notices) is amended as follows.
- (2) For subsection (1) substitute—

“(1) The Secretary of State may, for a purpose specified in subsection (1A), give a notice to a person within subsection (1B) requiring the person, within a time specified in the notice—

  - (a) to provide specified information relating to the person's financial affairs;
  - (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.

(1A) Those purposes are—

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- (a) determining whether to give a notice under section 29 to a person in respect of an installation or pipeline;
- (b) determining whether to make a proposal under section 34(1) to impose a duty on a person under section 36;
- (c) where a person has made such a proposal, determining whether to impose the duty on the person proposed.

(1B) A person falls within this subsection if—

- (a) a notice under section 29(1) may be given to the person,
- (b) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering proposing, in accordance with section 34(1)(b), that the person should have a duty under section 36, or
- (c) the person falls within section 34(2)(a) or (b) and the Secretary of State is considering whether to impose a duty on the person under section 36 in accordance with a proposal made under section 34(1)(b).”

(3) In subsection (2)—

- (a) for the words from “who has” to “that duty” substitute “ falling within subsection (2A) will be capable of carrying out any abandonment programme which has been submitted (whether or not it is approved) or may be submitted in relation to an installation or pipeline ”, and
- (b) in paragraph (a) after “information” insert “ (which may relate to the estimated costs of abandonment of the installation or pipeline or to any other financial or other matter) ”.

(4) After that subsection insert—

“(2A) A person falls within this subsection if—

- (a) a notice under section 29(1) has been given to the person, or
- (b) the person has a duty under section 36 to secure that an abandonment programme is carried out.”

(5) For subsection (4) substitute—

“(4) The Secretary of State may, after consulting the Treasury, give written notice to a person to whom subsection (4A) applies, requiring the person to take such action as may be specified in the notice within such time as may be so specified.

(4A) This subsection applies to a person if—

- (a) the person falls within subsection (2A), and
- (b) the Secretary of State is not satisfied that the person will be capable of carrying out any duty which has been, or is likely to be, imposed on the person by section 36.”

(6) After subsection (6) add—

“(7) It is an offence for a person to disclose information obtained by virtue of a notice under subsection (1) or (2) unless the disclosure—

- (a) is made with the consent of the person by or on behalf of whom the information was provided,

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- (b) is for the purpose of the exercise of the Secretary of State's functions under this Part, Chapter 3 of Part 2 of the Energy Act 2004 or Part 1 of the Energy Act 2008, or
- (c) is required by or under an enactment.”

#### Commencement Information

**I12** S. 73 in force at 26.1.2009 by S.I. 2009/45, art. 2(b)(i)

## 74 Protection of abandonment funds from creditors

- (1) After section 38 of the Petroleum Act 1998 (c. 17) insert—

### **“38A Protection of funds set aside for the purposes of abandonment programme**

- (1) This section applies where any security for the performance of obligations under an approved abandonment programme has been provided by a person (“the security provider”) by way of a trust or other arrangements.
- (2) Subsection (1) applies whether the security is provided before or after the programme is approved.
- (3) In this section a reference to “the protected assets” is a reference to the security and any property or rights in which it consists.
- (4) In this section “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) an insurance policy;
  - (e) a letter of credit.
- (5) The manner in which, and purposes for which, the protected assets are to be applied and enforceable (whether in the event of the security provider's insolvency or otherwise) is to be determined in accordance with the trust or other arrangements.
- (6) For the purposes of subsection (5), no regard is to be had to so much of the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 or any other enactment or rule of law as, in its operation in relation to the security provider or any conduct of the security provider, would—
  - (a) prevent or restrict the protected assets from being applied in accordance with the trust or other arrangement, or
  - (b) prevent or restrict their enforcement for the purposes of being so applied.
- (7) In subsection (6) “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament or Northern Ireland legislation.

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### **38B Directions to provide information about protected assets**

- (1) The Secretary of State may direct a security provider to publish specified information about the protected assets.
- (2) A direction under this section may specify—
  - (a) the time when the information must be published, and
  - (b) the manner of publication.
- (3) If a security provider fails to comply with a direction, the Secretary of State, or a creditor of the security provider, may make an application to the court under this section.
- (4) If, on an application under this section, the court decides that the security provider has failed to comply with the direction, it may order the security provider to take such steps as the court directs for securing that the direction is complied with.
- (5) In this section—
 

“court”—

  - (a) in relation to an application in England and Wales or Northern Ireland, means the High Court, and
  - (b) in relation to an application in Scotland, means the Court of Session;

“security provider” means a person who has provided security in relation to which section 38A applies;

“the protected assets”, in relation to a security provider, means the security, and any property or rights in which it consists.”
- (2) This section has effect in relation to a trust or other arrangements established on or after 1st December 2007.

#### **Commencement Information**

**I13** S. 74 in force at 26.1.2009 by S.I. 2009/45, art. 2(b)(i)

## **CHAPTER 4**

### **WELLS**

#### **75 Information about decommissioning of wells**

- (1) In Part 5 of the Petroleum Act 1998 (c. 17), before section 46 (Northern Ireland and Isle of Man shares of petroleum revenue) insert—

#### **“45A Abandoned wells**

- (1) This section applies in relation to a person who has drilled, or commenced drilling, a well in pursuance of a petroleum licence or a licence under section 4 of the Energy Act 2008 (gas storage and unloading licences).

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- (2) The Secretary of State may give a notice requiring the person—
  - (a) to provide specified information relating to the person's financial affairs, or
  - (b) to supply copies of specified documents, or documents of a specified description, relating to those affairs.
- (3) A notice under subsection (2) must specify the time within which the information or documents must be provided.
- (4) Subsection (5) applies if—
  - (a) the person fails to provide information or documents required by such a notice within the period specified in the notice, or
  - (b) on receiving information or documents required by a notice under subsection (2) the Secretary of State is not satisfied that the person will be capable of plugging and abandoning the well.
- (5) Where this subsection applies the Secretary of State may give the person a notice, after consulting the Treasury, requiring the person to take the action specified in the notice within the time so specified.
- (6) The Secretary of State may not give a notice to a person under subsection (5) without first giving the person an opportunity to make written representations as to whether the notice should be given.
- (7) It is an offence for a person to fail to comply with a notice under subsection (2) or (5) unless it is proved that the person exercised due diligence to avoid the failure.
- (8) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.
- (9) Section 41 (other than subsection (5)) applies in relation to prosecutions for offences under this section as it applies in relation to prosecutions for offences under Part 4.
- (10) In this section—
  - “petroleum licence” means a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above;
  - “well” includes a borehole.”
- (2) This section applies in relation to any well the drilling of which commences on or after the date on which this section comes into force.

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**Commencement Information**

**I14** S. 75 in force at 26.1.2009 by S.I. 2009/45, art. 2(b)(ii)

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## PART 4

### PROVISIONS RELATING TO OIL AND GAS

#### *Petroleum licences*

## 76 Transfers without the consent of the Secretary of State

After section 5 of the Petroleum Act 1998 (c. 17) (existing licences) insert—

### **“5A Rights transferred without the consent of Secretary of State**

- (1) This section applies if—
  - (a) a person is (or two or more persons are) the licensee in respect of a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above (“the transferor”),
  - (b) the transferor transfers a right granted by the licence, or derived from a right so granted, to another person (“the transferee”) after commencement in circumstances where the consent of the Secretary of State is required for the transfer, and
  - (c) that consent is not obtained.
- (2) The Secretary of State may, by notice given to the transferor and the transferee, direct that the right is to revert to the transferor from a date specified in the notice.
- (3) The date specified must not be earlier than the date on which the notice is given.
- (4) Before giving a notice to a person under subsection (2), the Secretary of State must—
  - (a) notify the person of the proposal to give the notice, and
  - (b) give the person a reasonable period within which to make written representations.
- (5) The Secretary of State may not give a notice under subsection (2) after the end of the period of 3 months beginning with the date on which the Secretary of State learns of the transfer.
- (6) In this section—
 

“commencement” means the time when this section comes into force;

“transfer” does not include a transfer by way of security for a loan.

### **5B Information**

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose to the Secretary of State information relating to the transfer of a right granted by a licence under section 2 of the Petroleum (Production) Act 1934 or section 3 above, or derived from a right so granted, for the purpose of enabling the Secretary of State to determine whether a transfer to which section 5A applies has taken place.

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- (2) This section applies despite any statutory or other restriction on the disclosure of information.
- (3) Information disclosed under this section must not be further disclosed except—
  - (a) for the purpose mentioned in subsection (1), with the consent (which may be general or specific) of the Commissioners,
  - (b) in pursuance of an order of a court, or
  - (c) with the consent of each person to whom the information relates.
- (4) A person who discloses information contrary to subsection (3) commits an offence if the identity of the person to whom the information relates—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it.
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed that—
  - (a) the disclosure was lawful, or
  - (b) the information had already and lawfully been made available to the public.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum, or both, and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine, or both.

### **5C Offences under section 5B: supplemental**

- (1) No proceedings for an offence under section 5B may be instituted in England and Wales except—
  - (a) by the Director of Revenue and Customs Prosecutions, or
  - (b) with the consent of the Director of Public Prosecutions.
- (2) No proceedings for an offence under section 5B may be instituted in Northern Ireland except—
  - (a) by the Commissioners for Her Majesty's Revenue and Customs, or
  - (b) with the consent of the Director of Public Prosecutions for Northern Ireland.
- (3) In the application of section 5B to Northern Ireland the reference in section 5B(6)(a) to 12 months is to be read as a reference to 6 months.
- (4) In the application of section 5B to England and Wales in relation to an offence committed before the commencement of section 282 of the Criminal Justice Act 2003 (c. 44) (short sentences) the reference in section 5B(6)(a) to 12 months is to be read as a reference to 6 months.”

#### **Commencement Information**

**I15** S. 76 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(i)

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## 77 Model clauses of petroleum licences

- (1) Schedule 3 amends the model clauses contained in the instruments specified in that Schedule.
- (2) Where a licence granted under the Petroleum (Production) Act 1934 (c. 36) or the Petroleum Act 1998 (c. 17), and in force immediately before commencement, incorporates model clauses amended by a paragraph of Schedule 3, the licence has effect with the amendments provided for by that paragraph of that Schedule.
- (3) The reference in subsection (2) to model clauses includes model clauses subject to any amendment or modification or with the omission of any model clause.
- (4) Where an amendment made by a paragraph of Schedule 3 confers a power to give a notice requiring the plugging and abandonment of a well, the power may not be exercised in relation to a well the drilling of which began before commencement.
- (5) Where an amendment made by a paragraph of Schedule 3 confers a power of revocation or partial revocation of a licence, that power may not be exercised by reason of an event which takes place before commencement.
- (6) A reference in any document to provisions of a licence which are amended by Schedule 3 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended.
- (7) A provision inserted in a licence by virtue of Schedule 3 may be altered or deleted by deed executed by the Secretary of State and the licensee or, as respects Scotland, by an instrument subscribed by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995 (c. 7).
- (8) In this section “commencement”, in relation to a paragraph of Schedule 3, means the time when that paragraph comes into force.

### Commencement Information

**I16** S. 77 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

VALID FROM 06/04/2009

### *Third party access*

## 78 Third party access to infrastructure

- (1) In section 66(1) of the Pipe-lines Act 1962 (c. 58) (interpretation)—
  - (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
    - “(d) separating, purifying, blending, odorising or compressing gas, for the purpose of—
      - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
      - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and

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- (e) loading gas—
    - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
    - (ii) piped from such a facility,for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”,
  - (b) in the definition of “terminal”, omit “and” after paragraph (b) and after paragraph (c) insert “; and
  - (d) oil processing facilities (within the meaning given by section 81(8) of the Energy Act 2008);”, and
  - (c) in the definition of “upstream petroleum pipe-line” after paragraph (c) insert — “including all apparatus, works and services associated with the operation of such a pipe-line or network.”
- (2) In section 12 of the Gas Act 1995 (c. 45) (rights to use gas processing facilities)—
  - (a) in subsection (6), in the definition of “gas processing operation”, omit “and” at the end of paragraph (b) and after paragraph (c) insert—
    - “(d) separating, purifying, blending, odourising or compressing gas for the purpose of—
      - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
      - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
    - (e) loading gas—
      - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
      - (ii) piped from such a facility,for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”, and
  - (b) for subsection (7) substitute—
    - “(7) For the purposes of this section “associate”, in relation to the owner of a gas processing facility, is to be construed in accordance with section 82 of the Energy Act 2008 (and for this purpose the reference in subsection (1) of that section to the owner of an oil processing facility is to be read as a reference to the owner of a gas processing facility).”
- (3) In section 26 of the Petroleum Act 1998 (c. 17) (meaning of “pipeline”)—
  - (a) in subsection (1) for “any apparatus and works associated with such a pipe or system” substitute “all apparatus, works and services associated with the operation of such a pipe or system”, and
  - (b) omit subsection (2).
- (4) In section 28 of that Act (interpretation of Part 3)—
  - (a) in the definition of “gas processing operation”, omit “and” after paragraph (b) and after paragraph (c) insert—
    - “(d) separating, purifying, blending, odourising or compressing gas, for the purpose of—

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- (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
    - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
  - (e) loading gas—
    - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
    - (ii) piped from such a facility,

for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);”,
- (b) after the definition of “notice” insert—
 

““oil processing facility” means any facility in Great Britain, the territorial sea adjacent to the United Kingdom or the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 which carries out oil processing operations;

“oil processing operations” means any of the following operations—

  - (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
  - (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
  - (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);”, and
- (c) in the definition of “terminal”, after paragraph (a) insert—
 

“(aa) oil processing facilities;”.

## 79      **Modification of pipelines**

- (1) The Pipe-lines Act 1962 (c. 58) is amended as follows.
- (2) After section 10F (reducing necessity for constructing additional pipelines) insert—

### **“10G Compulsory modifications of pipe-lines**

- (1) In the case of an upstream petroleum pipe-line, the Secretary of State may, on the application of a person other than the owner, give a notice (a “pipe-line modification notice”) to the applicant and the owner.
- (2) The Secretary of State may give a pipe-line modification notice only if the Secretary of State is satisfied—
  - (a) that the capacity of the pipe-line can and should be increased by modifying the apparatus and works associated with the pipe-line, or

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- (b) that the pipe-line can and should be modified by installing in it a junction through which another pipe-line may be connected to the pipe-line.
- (3) A pipe-line modification notice must—
  - (a) specify the modifications which the Secretary of State thinks should be made,
  - (b) specify the sums, or the method of determining the sums, which the Secretary of State thinks should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications,
  - (c) require the applicant to make such arrangements as the Secretary of State thinks appropriate to secure that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Secretary of State that they will be carried out,
  - (d) specify the period within which the applicant must make the arrangements mentioned in paragraph (c),
  - (e) require the owner, if the applicant makes the arrangements mentioned in paragraph (c) within the period specified under paragraph (d), to carry out the modifications within a period specified in the notice, and
  - (f) authorise the owner to recover the sums mentioned in paragraph (b) from the applicant if the works are carried out or the Secretary of State is satisfied that they will be carried out.
- (4) Before giving a pipe-line modification notice, the Secretary of State must give the owner of the pipe-line an opportunity to be heard.
- (5) References in this section to modifications include, in the case of apparatus and works, references to changes in, substitutions for and additions to the apparatus and works.
- (6) This section does not apply in relation to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it.

#### **10H Enforcement**

- (1) It is an offence for the owner of a pipe-line to contravene any provision of a pipe-line modification notice under section 10G in respect of the pipe-line.
- (2) A person guilty of the offence is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (3) It is a defence, in any proceedings for the offence, to prove that the accused exercised due diligence to comply with the provisions of the pipe-line modification notice.
- (4) Proceedings for the offence may not be instituted in England and Wales except—
  - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.

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- (5) Where the 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 neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
- (7) In this section “officer”, in relation to a body corporate, means—
  - (a) any director, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity.”
- (3) In section 10E (third party access to upstream petroleum pipelines), in subsection (1) after “pipe-lines” insert “ (but does not apply to a pipe-line if and to the extent that section 14 of the Petroleum Act 1998 applies in relation to it) ”.
- (4) In section 10F (supplemental provision relating to third party access), after subsection (4) add—
  - “(5) Before giving a notice under section 10G(1), the Secretary of State must give the person who applied for that notice—
    - (a) particulars of the modifications which it is proposed to specify in the notice, and
    - (b) an opportunity to make applications under section 10E in respect of the pipeline;
 and section 10E and subsections (1) to (4) of this section have effect for this purpose as if references to a pipe-line were references to the pipe-line as it would be with those modifications.”

## **80 Third party access to oil processing facilities**

- (1) A person (“the applicant”) who seeks a right to have petroleum processed by an oil processing facility must, before making an application to the Secretary of State under subsection (5), apply to the owner of the facility for the right.
- (2) An application under subsection (1) may be made only in respect of an oil processing facility which is situated in—
  - (a) Great Britain,
  - (b) the territorial sea adjacent to Great Britain, or
  - (c) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (3) An application under subsection (1) is to be made by notice in writing specifying the nature of the right which is being sought.
- (4) The notice must, in particular, specify—
  - (a) the period during which the petroleum is to be processed by the facility,
  - (b) the kind of petroleum to be processed, and
  - (c) the quantities of petroleum to be processed.

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- (5) If the owner and the applicant do not reach agreement on the application, the applicant may apply to the Secretary of State for directions which would secure to the applicant the right specified in the notice.
- (6) The Secretary of State may not consider an application under subsection (5) unless satisfied that the parties have had a reasonable time in which to reach agreement.
- (7) When considering an application under subsection (5) the Secretary of State must—
  - (a) decide whether the application is to be adjourned to enable further negotiations between the parties, considered further or rejected,
  - (b) give notice of that decision to the applicant, and
  - (c) in the case of a decision to consider the application further, give notice to the persons mentioned in subsection (8) and give them the opportunity to be heard in relation to the application.
- (8) Those persons are—
  - (a) the owner of the oil processing facility,
  - (b) any person with a right to have petroleum processed at the facility, and
  - (c) the Health and Safety Executive.
- (9) On an application under subsection (5), the Secretary of State may give directions if satisfied that they will not prejudice—
  - (a) the efficient operation of the oil processing facility,
  - (b) the processing by the facility of the quantities of petroleum which the owner or an associate of the owner requires or may reasonably be expected to require to be processed by the facility for the purposes of any business carried on by the owner or associate, or
  - (c) the processing by the facility of the quantities of petroleum which another person with a right to have petroleum processed by the facility requires to be processed in the exercise of that right.

## **81 Directions under section 80: supplemental**

- (1) Directions under section 80 may—
  - (a) specify the terms on which the Secretary of State considers that the owner of the oil processing facility should enter into an agreement with the applicant for all or any of the purposes mentioned in subsection (2);
  - (b) specify the sums, or the method of determining the sums, which the Secretary of State considers should be paid by the applicant as consideration for the right to have petroleum processed at the facility;
  - (c) require the owner, if the applicant pays or agrees to pay those sums within a period specified in the directions, to enter into an agreement with the applicant on the terms specified under paragraph (a).
- (2) The purposes mentioned in subsection (1)(a) are—
  - (a) securing to the applicant the right to have petroleum, of the kind and in the quantities specified in the direction, processed at the oil processing facility;
  - (b) securing that the applicant is not prevented or impeded from exercising that right;
  - (c) regulating the charges which may be made for the processing of petroleum by virtue of that right;

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- (d) securing to the applicant such ancillary or incidental rights as the Secretary of State considers necessary or expedient, which may include the right to have a pipeline connected to the facility by the owner.
- (3) For the purpose of considering an application under section 80(5), the Secretary of State may by notice require the owner or the applicant to provide such information relevant to the application as may be specified or described in the notice.
- (4) The information mentioned in subsection (3) may, in particular, include financial information relevant to the owner's or the applicant's activities with respect to oil processing operations.
- (5) The Secretary of State may not disclose to any person any information obtained under subsection (3) unless—
  - (a) the person by or on behalf of whom the information was provided consents to the disclosure, or
  - (b) the disclosure is required by virtue of an obligation imposed on the Secretary of State by or under an enactment.
- (6) Compliance with directions under section 80 is enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.
- (7) Civil proceedings under subsection (6) are to be brought—
  - (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (8) In this section and section 80—
  - “oil processing facility” means any facility which carries out oil processing operations;
  - “oil processing operations” means any of the following operations—
    - (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
    - (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
    - (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);
  - “owner”, in relation to an oil processing facility, includes a lessee and any person occupying or controlling the facility;
  - “petroleum” has the meaning given by section 1 of the Petroleum Act 1998 (c. 17) and includes petroleum which has undergone any processing.

## 82      **Meaning of “associate”**

- (1) For the purposes of section 80(9) a person is an associate of the owner of an oil processing facility if—

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- (a) either or both of them is a body corporate, and
  - (b) one of them controls the other, or both are controlled by the same person or persons,and subsections (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).
- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
  - (a) one half or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
  - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
  - (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of subsections (2) to (5), A controls B, A shall be taken to possess—
  - (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

## PART 5

### MISCELLANEOUS

#### *Duties of Gas and Electricity Markets Authority*

#### **83 Duties of the Gas and Electricity Markets Authority**

- (1) In section 4AA of the Gas Act 1986 (c. 44) (duties of the Gas and Electricity Markets Authority)—
  - (a) in subsection (1) after “interests of” insert “existing and future”,

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- (b) after subsection (2)(b) insert “; and
    - (c) the need to contribute to the achievement of sustainable development.”,
  - (c) omit subsection (5)(ba), and
  - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.
- (2) In section 3A of the Electricity Act 1989 (c. 29) (duties of the Gas and Electricity Markets Authority)—
- (a) in subsection (1) after “interests of” insert “existing and future”,
  - (b) after subsection (2)(b) insert “; and
    - (c) the need to contribute to the achievement of sustainable development.”,
  - (c) omit subsection (5)(ba), and
  - (d) in subsection (6) for “this section “consumers” includes” substitute “subsections (3) and (4) references to consumers include”.

#### Commencement Information

**I17** S. 83 in force at 26.1.2009 by S.I. 2009/45, art. 2(d)(i)

VALID FROM 29/07/2010

#### *Transmission systems*

### **84 Power to amend licence conditions etc: transmission systems**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a) to (d) of the Electricity Act 1989 (generation, transmission, distribution and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(a) to (d) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purpose only of facilitating—
- (a) access to a transmission system in Great Britain or offshore waters;
  - (b) efficient use of a transmission system in Great Britain or offshore waters.
- (3) The power conferred by subsection (1)—
- (a) may be exercised to make different provision in relation to different classes of customer;
  - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);

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- (c) may be exercised differently in different cases or circumstances;
  - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (4) The power conferred by subsection (1) may not be exercised after the end of the period of 2 years beginning with the day on which that subsection comes into force.
- (5) Provision included in a licence by virtue of that power—
  - (a) need not relate to the activities authorised by the licence;
  - (b) may do any of the things authorised by section 7(2) to (4) of the Electricity Act 1989 (c. 29) (which apply to the Gas and Electricity Markets Authority's power with respect to licence conditions under section 7(1)(a)).
- (6) In this section—
  - “offshore waters” means—
    - (a) waters in or adjacent to Great Britain which are between the 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);
  - “transmission system” has the meaning given by section 4(4) of the Electricity Act 1989.

## **85 Section 84: procedure**

- (1) Before making a modification, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (4) In this section “modification” means a modification under section 84.

## **86 Section 84: supplemental**

- (1) A modification under section 84 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 Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 84(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order make such modifications of provisions made by or under an Act or an Act of the Scottish Parliament (whenever passed or made)

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as the Secretary of State considers appropriate in consequence of provision made under section 84.

### *Energy reports*

## **87 Energy reports**

- (1) In section 1 of the Sustainable Energy Act 2003 (c. 30) (annual reports on progress towards sustainable energy aims)—
  - (a) in subsection (1) for “in each calendar year, beginning with 2004,” substitute “, for each reporting period, ”,
  - (b) in subsection (1A) omit paragraphs (a), (b) and (c),
  - (c) omit subsections (1B) and (1C),
  - (d) for subsections (2) and (3) substitute—
    - “(2) “Reporting period”, for the purposes of subsections (1) to (1AA), means—
      - (a) the period beginning with 24 February 2008 and ending with 31 December 2008, and
      - (b) each successive calendar year.
    - (3) A sustainable energy report must be published during the period beginning with 1 January and ending with 31 October following the reporting period to which it relates (“the publication period”).”, and
  - (e) after subsection (4) insert—
    - “(4A) A report or part of a report published under this section must specify the period to which it relates.”
- (2) In section 5 of the Climate Change and Sustainable Energy Act 2006 (c. 19) (national microgeneration targets: modification of section 1 of the Sustainable Energy Act 2003) in subsection (2)—
  - (a) for “(1B)” substitute “ (1AA) ”, and
  - (b) omit “and as if” to the end.

### **Commencement Information**

**I18** [S. 87](#) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(ii\)](#)

### *Smart meters*

## **88 Power to amend licence conditions etc: smart meters**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (c. 29) (distribution and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

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- (c) a condition of a particular licence under section 7 or 7A of the Gas Act 1986 (c. 44) (transporter, supply and shipping licences);
  - (d) the standard conditions incorporated in licences under those provisions by virtue of section 8 of that Act;
  - (e) a document maintained in accordance with the conditions of licences under section 6(1) of the Electricity Act 1989 or section 7 or 7A of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
  - (a) requiring the holder of a licence to provide or install, or facilitate the provision, installation or operation of, meters of a particular kind, or
  - (b) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a).
- (3) Modifications made by virtue of subsection (1) may include—
  - (a) technical specifications for meters (including specifications in respect of matters relevant to the ability to obtain remote access to meters);
  - (b) a prohibition on the supply of gas or electricity through a meter other than a meter which complies with a technical specification under paragraph (a);
  - (c) provision about the installation of meters which comply with a technical specification under paragraph (a) (including provision about the replacement of existing meters);
  - (d) provision about electricity generated by a customer;
  - (e) provision about the circumstances in which any pre-payment facilities of a meter may be utilised;
  - (f) provision about the use of a meter remotely to disconnect a customer's premises;
  - (g) provision about the protection of consumers;
  - (h) provision about access to, and the use of, an electricity distribution system or part of an electricity distribution system for communication in connection with a meter;
  - (i) provision about access to information from meters (including provision enabling a customer, or a person acting on a customer's behalf, to have access to information about the customer's consumption of gas or electricity);
  - (j) provision about communication of information by or to meters (including provision about its onward communication) and about the use of such information;
  - (k) provision requiring the holder of the licence to enter (or refrain from entering) into an agreement of a specified kind, or with a specified person;
  - (l) provision specifying, or enabling the determination of, a date from which a modification is to take effect.
- (4) The power conferred by subsection (1)—
  - (a) may be exercised to make different provision in relation to different classes of customer;
  - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (c) may be exercised differently in different cases or circumstances;

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- (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (5) The power conferred by subsection (1) may not be exercised after the end of the period of 5 years beginning with the day on which that subsection comes into force.
- (6) Provision included in a licence by virtue of that power—
  - (a) need not relate to the activities authorised by the licence;
  - (b) in the case of a licence under section 7 or 7A of the Gas Act 1986 (c. 44), may do any of the things authorised by section 7B(5) of that Act (which apply to the Gas and Electricity Markets Authority's power with respect to licence conditions under section 7B(4)(a));
  - (c) in the case of a licence under section 6(1)(c) or (d) of the Electricity Act 1989 (c. 29), may do any of the things authorised by section 7(2) to (4) of that Act (which apply to that Authority's power with respect to licence conditions under section 7(1)(a)).
- (7) In this section a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.

## **89 Power to amend licence conditions etc: procedure**

- (1) Before making a modification, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

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(10) In this section “modification” means a modification under section 88.

## **90 Smart meters: supplemental**

- (1) A modification under section 88 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 Gas Act 1986 (c. 44) or Part 1 of the Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 88(1)(b) or (d) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under section 88.

## **91 Licensing of activities relating to smart meters**

Schedule 4 contains amendments to the Gas Act 1986 and the Electricity Act 1989.

### *Gas meters*

## **92 Gas meters**

- (1) The functions of the Gas and Electricity Markets Authority (“the Authority”) under gas meter legislation are transferred to the Secretary of State.
- (2) References in gas meter legislation to the Authority (including references in that legislation which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State.
- (3) Regulations made, or treated as made, by the Authority under section 17 of the Gas Act 1986 (gas meter testing and stamping) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State.
- (4) Anything else done by the Authority under gas meter legislation which has effect immediately before commencement has effect on and after commencement as if it had been done by the Secretary of State.
- (5) In this section—
  - “commencement” means the day on which this section comes into force;
  - “gas meter legislation” means—
    - (a) section 17 of the Gas Act 1986 (c. 44), and
    - (b) gas meter regulations;
  - “gas meter regulations” means—

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- (a) the Measuring Instruments (EEC Requirements) Regulations 1988 (S.I. 1988/186);
- (b) the Measuring Instruments (EEC Requirements) (Gas Volume Meters) Regulations 1988 (S.I. 1988/296);
- (c) the Measuring Instruments (Non-Prescribed Instruments) Regulations 2006 (S.I. 2006/1270);
- (d) the Measuring Instruments (Gas Meters) Regulations 2006 (S.I. 2006/2647);
- (e) any regulations made, or treated as made, under section 17 of the Gas Act 1986.

#### Commencement Information

**I19** S. 92 in force at 1.4.2009 by S.I. 2009/45, art. 3(b)(i)

### 93 Section 92: consequential amendments

- (1) Section 17 of the Gas Act 1986 is amended as follows.
- (2) In subsection (2) for the words “a member of the Director's staff” (which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as a reference to a member of the staff of the Gas and Electricity Markets Authority) substitute “employed in the civil service of the State”.
- (3) In subsections (7), (8) and (10) for the words “members of the Director's staff” (which, by virtue of section 3(2) of the Utilities Act 2000, are treated as references to members of the Authority's staff) substitute “employed in the civil service of the State”.
- (4) After subsection (7) insert—
  - “(7A) The Secretary of State may pay, out of money provided by Parliament, to meter examiners who are not employed in the civil service of the State or to any employer of such examiners—
    - (a) sums in connection with the performance by such examiners of functions conferred by or under this section or gas meter regulations (within the meaning of section 92 of the Energy Act 2008), and
    - (b) sums in respect of any pension payable to or in respect of such examiners.”
- (5) In subsection (9) omit “with the consent of the Secretary of State”.

#### Commencement Information

**I20** S. 93 in force at 1.4.2009 by S.I. 2009/45, art. 3(b)(i)

### 94 Power to amend licence conditions: gas

- (1) The Secretary of State may modify—
  - (a) the conditions of a particular licence under section 7 of the Gas Act 1986;
  - (b) the standard conditions incorporated in licences under that section by virtue of section 8 of that Act.

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- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of enabling the Gas and Electricity Markets Authority (“the Authority”) to recover and pay into the Consolidated Fund amounts in respect of—
  - (a) payments made by the Secretary of State by virtue of section 17(7) or (7A) of the Gas Act 1986 (c. 44);
  - (b) other costs incurred by the Secretary of State in performing a function conferred by section 17 of the Gas Act 1986 or by gas meter regulations (within the meaning of section 92).
- (3) The power in subsection (1) includes a power to make incidental, consequential or transitional modifications.
- (4) Before making a modification under this section the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the time when this section comes into force.
- (6) The Secretary of State must publish modifications under this section.
- (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 Gas Act 1986.
- (8) Where the Secretary of State modifies the standard conditions under subsection (1)
  - (b), the Authority must—
    - (a) make the same modifications of those standard conditions for the purposes of their incorporation in licences granted after that time, and
    - (b) publish the modifications.
- (9) The power under subsection (1) may not be exercised after the end of the period of 6 months beginning with the day on which that subsection comes into force.

#### Commencement Information

**I21** S. 94 in force at 26.1.2009 by S.I. 2009/45, art. 2(d)(iii)

### *Electricity meters*

## 95 Electricity meters

- (1) The functions of the Gas and Electricity Markets Authority (“the Authority”) under electricity meter legislation are transferred to the Secretary of State.
- (2) References in electricity meter legislation to the Authority (including references in that legislation which, by virtue of section 3(2) of the Utilities Act 2000 (c. 27), are treated as references to the Authority) are to be treated, so far as necessary for the purposes or in consequence of the transfer, as if they were references to the Secretary of State.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

- (3) Regulations made, or treated as made, by the Authority under Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989 (c. 29) (electricity meters) and in force immediately before commencement have effect on and after commencement as if they had been made by the Secretary of State.
- (4) Anything else done by the Authority under electricity meter legislation which has effect immediately before commencement is treated on and after commencement as if it had been done by the Secretary of State.
- (5) In this section—
  - “commencement” means the day on which this section comes into force;
  - “electricity meter legislation” means—
    - (a) Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989 (c. 29), and
    - (b) electricity meter regulations;
  - “electricity meter regulations” means—
    - (a) the Measuring Instruments (EC Requirements) (Electrical Energy Meters) Regulations 1995 (S.I. 1995/2607);
    - (b) the Electromagnetic Compatibility Regulations 2006 (S.I. 2006/3418);
    - (c) the Measuring Instruments (Active Electrical Energy Meters) Regulations 2006 (S.I. 2006/1679);
    - (d) any regulations made under Schedule 7 (other than paragraph 12 of that Schedule) to the Electricity Act 1989.

#### Commencement Information

**I22** S. 95 in force at 1.4.2009 by S.I. 2009/45, art. 3(b)(ii)

## 96 Section 95: consequential amendments

- (1) The Electricity Act 1989 is amended as follows.
- (2) In section 106 (regulations and orders), in subsection (1) after “conferred by” insert “section 23, ”.
- (3) In paragraph 1 of Schedule 7 (consumption to be monitored by appropriate meters)—
  - (a) for sub-paragraph (7) substitute—
    - “(7) In relation to a dispute arising under this paragraph between an electricity supplier and a customer, section 23 of this Act applies with the substitution, for references to the Authority (and references treated as references to the Authority) of references to the Secretary of State.”, and
  - (b) in sub-paragraphs (8) and (9), after “section 23 of this Act” insert “ (as modified by sub-paragraph (7)) ”.
- (4) In paragraph 4 of that Schedule (appointment of meter examiners)—
  - (a) in sub-paragraph (2) after “examiners” insert “ employed in the civil service of the State ”,
  - (b) after that sub-paragraph insert—

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- “(2A) The Secretary of State may pay, out of money provided by Parliament, to meter examiners who are not employed in the civil service of the State or to any employer of such examiners—
- (a) sums in connection with the performance by such examiners of functions conferred by or under this Schedule or electricity meter regulations (within the meaning of section 95 of the Energy Act 2008), and
  - (b) sums in respect of any pension payable to or in respect of such examiners.”, and
- (c) in sub-paragraph (3) after “examiners” insert “ employed in the civil service of the State ”.
- (5) In paragraph 5 of that Schedule (certification of meters), in sub-paragraph (4)(b) after “paid” (in the first place) insert “ to meter examiners employed in the civil service of the State ”.
- (6) In paragraph 6 of that Schedule (apparatus for testing etc of meters), in sub-paragraph (2) for “their functions under” substitute “ functions conferred by or under”.
- (7) In paragraph 7 of that Schedule (testing etc of meters)—
- (a) in sub-paragraph (1) after “examiner” insert “ employed in the civil service of the State ”, and
  - (b) in sub-paragraph (3) after “paid” (in the first place) insert “ to meter examiners employed in the civil service of the State ”.
- (8) For paragraph 10 of that Schedule (meters to be kept in proper order), for sub-paragraph (2A) substitute—
- “(2A) In relation to a dispute arising under this paragraph between an electricity supplier and a customer, section 23 of this Act applies, with the substitution for references to the Authority (and references treated as references to the Authority) of references to the Secretary of State.”
- (9) In paragraph 13 of that Schedule (interpretation) for the definition of “regulations” substitute—
- ““regulations” means—
- (a) in paragraph 12, regulations made by the Authority with the consent of the Secretary of State, and
  - (b) in every other case, regulations made by the Secretary of State.”

#### Commencement Information

**123** [S. 96](#) in force at 1.4.2009 by [S.I. 2009/45](#), [art. 3\(b\)\(ii\)](#)

## 97 Power to amend licence conditions: electricity

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(b) or (c) of the Electricity Act 1989 (c. 29) (transmission and distribution licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act.

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- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of enabling the Gas and Electricity Markets Authority (“the Authority”) to recover and pay into the Consolidated Fund amounts in respect of—
  - (a) payments made by the Secretary of State by virtue of paragraph 4(2) or (2A) of Schedule 7 to the Electricity Act 1989 (payments relating to meter examiners);
  - (b) other costs incurred by the Secretary of State in performing a function conferred by Schedule 7 to the Electricity Act 1989 or by electricity meter regulations (within the meaning of section 95).
- (3) The power in subsection (1) includes a power to make incidental, consequential or transitional modifications.
- (4) Before making a modification under this section the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the time when this section comes into force.
- (6) The Secretary of State must publish modifications under this section.
- (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 Electricity Act 1989 (c. 29).
- (8) Where the Secretary of State modifies the standard conditions of licences of any type under subsection (1)(b), the Authority must—
  - (a) make 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.
- (9) The power under subsection (1) may not be exercised after the end of the period of 6 months beginning with the day on which that subsection comes into force.

#### Commencement Information

**I24** S. 97 in force at 26.1.2009 by S.I. 2009/45, art. 2(d)(iv)

### Connection offer expenses

## 98 Costs connected with making an offer of connection

- (1) Section 16A of the Electricity Act 1989 (procedure for requiring a connection) is amended as follows.
- (2) After subsection (4) insert—
 

“(4A) The Secretary of State may, after consulting the Authority, make provision by regulations for the purpose of entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay connection offer expenses to such extent as is reasonable in all the circumstances.

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(4B) In this section “connection offer expenses” means expenses which—

- (a) are of a kind specified by the regulations, and
- (b) have been reasonably incurred by the electricity distributor.

(4C) Regulations under subsection (4A) may specify—

- (a) circumstances in which an electricity distributor may not require the payment of connection offer expenses by virtue of the regulations;
- (b) the manner in which expenses reasonably incurred by an electricity distributor are to be calculated for the purposes of subsection (4B) (b).”

- (3) In subsection (5) for “and any information” to “connection” substitute “, any information requested under subsection (3) and any amount payable by virtue of subsection (4A) to the distributor by the person requiring the connection, the distributor shall give to that person ”.

#### Commencement Information

**I25** [S. 98](#) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(v\)](#)

PROSPECTIVE

### *Electricity safety*

#### **99 Electricity safety**

- (1) Part 1 of the Health and Safety at Work etc. Act 1974 (c. 37) has effect as if section 29 of the Electricity Act 1989 (c. 29) (security of supply, safety and inspections), and regulations made under that section, in so far as they relate to the protection of the public from dangers relating to electricity and to eliminating or reducing the risks of personal injury, were existing statutory provisions within the meaning of that Part.
- (2) Without prejudice to the generality of section 15(1) of the 1974 Act (health and safety regulations), regulations under that section may—
- (a) repeal or modify a provision mentioned in subsection (1),
  - (b) make any provision which, but for a repeal or modification under paragraph (a), could be made by regulations made under section 29 of the Electricity Act 1989.

### *Renewable heat incentives*

#### **100 Renewable heat incentives**

- (1) The Secretary of State may make regulations—
- (a) establishing a scheme to facilitate and encourage renewable generation of heat, and
  - (b) about the administration and financing of the scheme.

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(2) Regulations under this section may, in particular—

- (a) make provision for the Secretary of State or the Authority to make payments, or to require designated fossil fuel suppliers to make payments, in specified circumstances, to—
  - (i) the owner of plant used or intended to be used for the renewable generation of heat, whether or not the owner is also operating or intending to operate the plant;
  - (ii) a producer of biogas or biomethane;
  - (iii) a producer of biofuel for generating heat;
- (b) make provision about the calculation of such payments;
- (c) make provision about the circumstances in which such payments may be recovered;
- (d) require designated fossil fuel suppliers to provide specified information to the Secretary of State or the Authority;
- (e) require the payment of a levy by designated fossil fuel suppliers to the Secretary of State or the Authority;
- (f) make provision about the calculation of the levy;
- (g) make provision for payments to fossil fuel suppliers in specified circumstances;
- (h) make provision about the enforcement of obligations imposed by or by virtue of the regulations (which may include a power for the Secretary of State or the Authority to impose financial penalties);
- (i) confer functions on the Secretary of State or the Authority, or both.

(3) In this section—

“Authority” means the Gas and Electricity Markets Authority;

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

“biogas” means gas produced by the anaerobic conversion of organic matter;

“biomass” means material, other than fossil fuel, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;

“biomethane” means biogas which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986 (c. 44) (gas transporter licences);

“designated fossil fuel suppliers” means—

- (a) if the regulations so provide, a specified class of fossil fuel suppliers, and
- (b) in any other case, all fossil fuel suppliers;

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) natural gas (within the meaning of the Energy Act 1976 (c. 76));
- (d) crude liquid petroleum;
- (e) petroleum products (within the meaning of that Act);
- (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);

“fossil fuel supplier” means a person who supplies fossil fuel to consumers for the purpose of generating heat;

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“owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;

“plant” includes any equipment, apparatus or appliance;

“renewable generation of heat” means the generation of heat by means of a source of energy or technology mentioned in subsection (4).

(4) The sources of energy and technologies are—

- (a) biomass;
- (b) biofuels;
- (c) fuel cells;
- (d) water (including waves and tides);
- (e) solar power;
- (f) geothermal sources;
- (g) heat from air, water or the ground;
- (h) combined heat and power systems (but only if the system's source of energy is a renewable source within the meaning given by section 32M of the Electricity Act 1989 (c. 29)).

(5) Regulations may—

- (a) modify the list of sources of energy and technologies in subsection (4);
- (b) modify the definition of “biogas” or “biomass” in subsection (3).

(6) Regulations may make provision, for the purposes of subsection (2)(a)(iii) and the definition of “fossil fuel supplier”, specifying that particular activities do or do not constitute generating heat.

(7) Before making regulations under this section which extend to Scotland, the Secretary of State must—

- (a) if the regulations contain any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, obtain the consent of the Scottish Ministers;
- (b) in any other case, consult the Scottish Ministers.

#### Commencement Information

**I26** S. 100 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(d\)\(vi\)](#)

### *Nuclear information*

## **101 Security of sensitive nuclear information**

In Part 8 of the Anti-terrorism, Crime and Security Act 2001 (c. 24), after section 80 (prohibition on disclosure of uranium enrichment information) insert—

### **“80A Extension of Official Secrets Acts to certain places**

- (1) A place to which subsection (2) applies is deemed to be a place belonging to or used for the purposes of Her Majesty for the purposes of section 3(c) of the

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Official Secrets Act 1911 (c. 28) (power of Secretary of State to declare a place belonging to or used for the purposes of Her Majesty a prohibited place).

(2) This subsection applies to a place if—

- (a) equipment or software which is designed or adapted for use in, or in connection with, the enrichment of uranium (or which is not so designed or adapted but is likely to be of exceptional use in that connection) is held at the place, or
- (b) information relating to, or capable of use in connection with, the enrichment of uranium is held at the place.

(3) In this section—

“enrichment of uranium” means a treatment of uranium which increases the proportion of isotope 235 contained in the uranium, and  
 “equipment” includes equipment which has not yet been assembled and a component of equipment.”

#### Commencement Information

**I27** S. 101 in force at 26.1.2009 by S.I. 2009/45, art. 2(d)(vii)

### *Application of general duties*

## **102 Application of general duties to functions relating to licences**

(1) Sections 4AA to 4B of the Gas Act 1986 (c. 44) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (2), of functions conferred on the Secretary of State or the Authority by or under—

- (a) sections 88 to 90;
- (b) section 94.

(2) The matters are—

- (a) activities required to be authorised by gas licences,
- (b) such licences and the conditions of such licences,
- (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
- (d) companies holding such licences.

(3) In section 4AA(2)(b) of the Gas Act 1986 (c. 44) (duty to have regard to ability of licence holders to finance obligations) for “or the Utilities Act 2000” substitute “, the Utilities Act 2000 or Part 5 of the Energy Act 2008 ”.

(4) Sections 3A to 3D of the Electricity Act 1989 (c. 29) (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (5), of functions conferred on the Secretary of State or the Authority by or under—

- (a) sections 41 to 43;
- (b) sections 84 to 86;
- (c) sections 88 to 90;
- (d) section 97.

(5) The matters are—

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- (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.
- (6) In section 3A(2)(b) of the Electricity Act 1989 (duty to have regard to ability of licence holders to finance obligations) for “or Part 2 or 3 of the Energy Act 2004” substitute “, Part 2 or 3 of the Energy Act 2004 or Part 2 or 5 of the Energy Act 2008 ”.
- (7) In this section—
- “the Authority” means the Gas and Electricity Markets Authority;
  - “electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities);
  - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities).

## PART 6

### GENERAL

#### 103 Offences by bodies corporate etc

- (1) Where an 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 neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
- (3) Where 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,
- the partner (as well as the firm) is guilty of the offence and liable to be proceeded with and dealt with accordingly.
- (4) In this section—
- “offence” means an offence under this Act;
  - “officer”, in relation to a body corporate, means—
- (a) any director, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity.

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#### Commencement Information

**I28** S. 103 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(i\)](#)

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## 104 Subordinate legislation

- (1) Orders and regulations made by the Secretary of State or the Scottish Ministers under this Act are to be made by statutory instrument.
- (2) An instrument to which this subsection applies may—
  - (a) provide for a person to exercise a discretion in dealing with any matter;
  - (b) include incidental, supplementary and consequential provision;
  - (c) make transitory or transitional provisions or savings;
  - (d) make provision generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as conditions specified in the instrument are satisfied);
  - (e) make different provision for different cases or circumstances or for different purposes.
- (3) Subsection (2) applies to—
  - (a) an Order in Council under this Act,
  - (b) an order or regulations made by the Secretary of State or the Scottish Ministers under this Act (other than an order which contains provision made under section 110 (commencement) only).
- (4) The provision which may be made by virtue of subsection (2)(b) or (c) includes provision modifying any provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made).

### Commencement Information

**I29** S. 104 partly in force; s. 104 in force for certain purposes at Royal Assent, see s. 110(1)(b)

**I30** S. 104 in force at 26.1.2009 in so far as not already in force by S.I. 2009/45, art. 2(e)(ii)

## 105 Parliamentary control of subordinate legislation

- (1) A statutory instrument containing an Order in Council, order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
  - (a) an order which contains, or regulations which contain, (whether alone or together with other provision) provision made under—
    - (i) section 13 (importation and storage of combustible gas: inspectors),
    - (ii) section 27 (carbon dioxide storage: inspectors),
    - (iii) section 41(6) (feed-in tariffs for small-scale electricity generation),
    - (iv) section 45(6)(a) (power to specify matters as designated technical matters),
    - (v) section 62(1) (power to apply Chapter 1 of Part 3 to other nuclear installations), or
    - (vi) section 100 (renewable heat incentives);
  - (b) an order, regulations or Order in Council which contains (whether alone or together with other provision) provision which, by virtue of section 43(3)(b), 86(3), 90(3), 104(4), 107(2)(a) or 109(3)(a) modifies an Act or an Act of the Scottish Parliament;

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- (c) an order which contains provision made under section 110 (commencement orders) only.
- (3) No order, regulations or recommendation to make an Order in Council, within subsection (2)(a) or (b), may be made unless a draft of the order, regulations or Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- (4) In the case of a statutory instrument containing an order or regulations made by the Scottish Ministers, this section has effect as if—
  - (a) in subsection (1) the reference to either House of Parliament were a reference to the Scottish Parliament,
  - (b) in subsection (2)(b) for “107(2)(a)” there were substituted “ 107(3)(a) ”, and
  - (c) in subsection (3) the reference to each House of Parliament were a reference to the Scottish Parliament.

#### Commencement Information

**I31** S. 105 partly in force; s. 105 in force for certain purposes at Royal Assent, see [s. 110\(1\)\(b\)](#)

**I32** S. 105 in force at 26.1.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 2\(e\)\(iii\)](#)

## 106 Interpretation

In this Act—

- “functions” includes powers and duties;
- “modify” includes amend, add to, revoke or repeal (and references to “modifications” are to be construed accordingly);
- “territorial sea” means the territorial sea adjacent to the United Kingdom.

## 107 Minor and consequential amendments

- (1) Schedule 5 contains minor and consequential amendments.
- (2) The Secretary of State may by order make such modifications of—
  - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
  - (b) an instrument made before the end of that session,
 as the Secretary of State considers appropriate in consequence of this Act.
- (3) The Scottish Ministers may by order make such modifications of—
  - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
  - (b) an instrument made before the end of that session,
 as the Scottish Ministers consider appropriate in consequence of Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

#### Commencement Information

- I33** S. 107 partly in force; s. 107(1) in force for certain purposes at Royal Assent, see s. 110(1)(e)
- I34** S. 107(1) in force at 26.1.2009 for specified purposes by S.I. 2009/45, art. 2(e)(iv)
- I35** S. 107(1) in force at 1.4.2009 for specified purposes by S.I. 2009/45, art. 3(c)(i)
- I36** S. 107(2)(3) in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(v)

## 108 Repeals

Schedule 6 contains repeals (including repeals of spent provisions).

#### Commencement Information

- I37** S. 108 in force at 26.1.2009 for specified purposes by S.I. 2009/45, art. 2(e)(vi)
- I38** S. 108 in force at 1.4.2009 for specified purposes by S.I. 2009/45, art. 3(c)(ii)

## 109 Transitional provision etc

- (1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Act.
- (2) The Scottish Ministers may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.
- (3) The provision which may be made by virtue of subsection (1) or (2) includes provision modifying any provision made by—
  - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
  - (b) an instrument made before the end of that session.
- (4) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

#### Commencement Information

- I39** S. 109 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(vii)

## 110 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
  - (a) section 37, so far as is necessary for enabling the exercise on or after that day of any power to make an order that is conferred by virtue of that section, and section 38(1);
  - (b) sections 88 to 91 (and sections 104 and 105 in so far as those sections apply in relation to orders made under section 90(3)) and Schedule 4;
  - (c) section 102;

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- (d) this section and sections 106, 111, 112 and 113;
  - (e) paragraph 5 of Schedule 5 (and section 107(1) so far as it relates to that paragraph).
- (2) Subject to that, the provisions of this Act come into force on such day as may be appointed by order of the Secretary of State.
- (3) An order under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provisions or savings;
  - (c) make different provision for different cases or circumstances or for different purposes.

## 111 Financial provisions

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State by virtue of this Act;
- (b) any expenditure incurred by the Gas and Electricity Markets Authority by virtue of this Act;
- (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

## 112 Extent

- (1) Subject to subsections (2) to (5), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) The following provisions extend to England and Wales and Scotland only—
  - (a) section 38 (renewables obligation: supplemental provision);
  - (b) sections 41 to 43 (feed-in tariffs for small-scale electricity generation);
  - (c) section 80 to 82 (third party access to oil processing facilities);
  - (d) sections 84 to 86 (power to amend licence conditions: transmission systems);
  - (e) sections 88 to 90 (smart meters);
  - (f) sections 92 to 97 (gas and electricity meters);
  - (g) section 99 (electricity safety);
  - (h) section 100 (renewable heat incentives);
  - (i) section 102 (general duties of Authority and Secretary of State).
- (3) Chapter 1 of Part 3 (other than section 65) (nuclear decommissioning) extends to England and Wales and Northern Ireland only.
- (4) Section 40(2) to (4) (the Northern Ireland renewables obligation) extend to Northern Ireland only.
- (5) An amendment or repeal contained in this Act has the same extent as the enactment or relevant part of the enactment to which the amendment or repeal relates.

## 113 Short title

This Act may be cited as the Energy Act 2008.

SCHEDULES

VALID FROM 06/04/2009	
SCHEDULE 1	Section 36
AMENDMENTS RELATING TO CHAPTERS 2 AND 3 OF PART 1	
.....	

VALID FROM 20/05/2009	
SCHEDULE 2	Section 44
PROPERTY SCHEMES	
“SCHEDULE 2A	SECTION 6E
PROPERTY SCHEMES	
Scheme-making power	
1 (1) This paragraph applies where—	
(a) a tender exercise is held in relation to an offshore transmission licence,	
(b) any transmission assets have been transferred to the successful bidder or, for operational purposes, it is necessary for any transmission assets to be so transferred, and	
(c) those assets were not constructed or installed by the successful bidder.	
(2) The Authority may, on an application under paragraph 3, make a scheme (“a property scheme”) providing for—	
(a) the transfer to the successful bidder of, or	
(b) the creation in favour of the successful bidder of rights in relation to, property, rights or liabilities.	
(3) In sub-paragraph (1)—	
(a) “transmission assets” means the transmission system in respect of which the offshore transmission licence is (or is to be) granted or anything which forms part of that system, and	
(b) the reference to the successful bidder in paragraph (c) includes, if the successful bidder is a body corporate, a reference to any body corporate which was associated with the successful bidder at the time the transmission assets were constructed or installed.	

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- (4) Until such time as section 180 of the Energy Act 2004 (meaning of “high voltage line”) comes into force, “transmission system” in sub-paragraph (3)(a) includes a system which, if that section were in force, would be a transmission system.

*Further provision about the content of a scheme*

- 2 (1) A property scheme may also contain—
- (a) provision for the creation, in relation to property which the scheme transfers, of an interest in or right over the property in favour of the asset owner;
  - (b) provision for the creation of any rights or liabilities as between the asset owner and the successful bidder;
  - (c) provision for imposing on the asset owner or the successful bidder an obligation to enter into a written agreement with, or to execute an instrument of another kind in favour of, the other;
  - (d) provision requiring the successful bidder to pay the asset owner compensation;
  - (e) provision requiring the asset owner to pay the successful bidder compensation;
  - (f) supplemental, incidental and consequential provision.
- (2) The property, rights and liabilities which may be transferred by a property scheme include property, rights or liabilities which would not otherwise be capable of being transferred.
- (3) If a property scheme provides for the division of an estate or interest in land and any rent is—
- (a) payable in respect of the estate or interest under a lease, or
  - (b) charged on the estate or interest,
- the scheme may contain provision for apportionment or division so that one part is payable in respect of, or charged on, only one part of the estate or interest and the other part is payable in respect of, or charged on, only the other part of the estate or interest.
- (4) A property scheme which contains provision which affects a third party may also contain provision requiring the successful bidder or the asset owner to pay the third party compensation.

*Applications for schemes*

- 3 (1) An application for a property scheme may be made by—
- (a) the preferred bidder,
  - (b) the successful bidder, or
  - (c) a person who owns the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.
- (2) An application must specify—
- (a) the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme,
  - (b) the name and address of the non-applicant party, and

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- (c) the name and address of each third party whom the applicant considers would be affected by a provision of the proposed property scheme.
- (3) All property, rights and liabilities specified in an application in accordance with sub-paragraph (2)(a) must belong to the same person.
- (4) A person may make more than one application under this paragraph.

#### *Timing of applications*

- 4 An application for a property scheme, in relation to a tender exercise, may only be made at a time when—
  - (a) a notice identifying the preferred bidder has been published under paragraph 35(2) (and not withdrawn), or
  - (b) a notice has been published under paragraph 36 identifying the successful bidder.
- 5
  - (1) No application may be made for a property scheme after the end of the transitional period.
  - (2) Subject to sub-paragraph (3), “the transitional period” means the period of 4 years beginning with the day on which section 92 of the Energy Act 2004 (competitive tenders for offshore transmission licences) comes into force.
  - (3) Before the end of the transitional period, the Secretary of State may, by order, extend that period by a period specified in the order.
  - (4) An order under sub-paragraph (3) may relate to a particular case, or to cases of a particular description, only.
  - (5) The total transitional period in any case must not exceed 7 years.
  - (6) Before making an order under sub-paragraph (3), the Secretary of State must give notice of the proposal to extend the transitional period.
  - (7) The notice must—
    - (a) state that the Secretary of State proposes to make an order extending the transitional period and set out the terms of the proposed order,
    - (b) state the reasons why the Secretary of State proposes to make the order, and
    - (c) specify the time (not being less than 28 days from the date of publication of the notice under sub-paragraph (8)(b)) within which representations with respect to the proposals may be made.
  - (8) The notice must be given—
    - (a) by serving a copy of it on the Authority, and
    - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
      - (i) the owner of any property, right or liability who may have an interest in the making of the proposed order, and
      - (ii) if the order relates to a case where a tender exercise has begun, any person who has submitted an application for the offshore transmission licence to which the exercise relates.

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*Notifying the non-applicant party*

- 6 (1) On receipt of an application for a property scheme, the Authority must serve on the non-applicant party a notice which—
- (a) invites the non-applicant party to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and
  - (b) describes the effect of paragraphs 9 and 11.
- (2) A notice under sub-paragraph (1) must be accompanied by—
- (a) a copy of the application, and
  - (b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (3).
- (3) The notice under paragraph 16 must require the non-applicant party to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
- (a) the name and address of each person to whom sub-paragraph (4) applies, or
  - (b) if the non-applicant party does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.
- (4) This sub-paragraph applies to a person—
- (a) whom the non-applicant party considers is a third party who would be affected by a provision of the proposed property scheme, and
  - (b) whose name and address were not specified in the application under paragraph 3(2)(c).

*Notifying third parties*

- 7 (1) As soon as reasonably practicable after receiving the information required by a notice within paragraph 6(2)(b), the Authority must serve on each person within sub-paragraph (2)—
- (a) a copy of the application, and
  - (b) a notice inviting that person to make representations to the Authority about the application within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served.
- (2) A person is within this sub-paragraph if the person's name and address were—
- (a) specified in the application in accordance with paragraph 3(2)(c), or
  - (b) provided to the Authority in response to a notice within paragraph 6(2)(b).

*Publishing the application*

- 8 As soon as reasonably practicable after an application is made for a property scheme, the Authority must publish a notice which—
- (a) states that an application for a property scheme has been made,
  - (b) states the names of the applicant and the non-applicant party, and
  - (c) contains a general description of the property scheme to which the application relates.

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### *Supplementing the application*

- 9 (1) The non-applicant party may, by notice served on the Authority during the period mentioned in paragraph 6(1)(a), modify the application so as to specify additional property, rights or liabilities of the asset owner in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme.
- (2) Where an application is modified by a notice under sub-paragraph (1) (a “modification notice”), this Schedule has effect from that time as if any additional property, rights or liabilities specified in the notice had been specified in the application in accordance with paragraph 3(2)(a).
- (3) A modification notice must specify the name and address of each person—
  - (a) whom the non-applicant party considers to be a third party who would be affected by a provision of the proposed property scheme as modified by the notice, and
  - (b) who is not within paragraph 7(2).
- (4) On receipt of a modification notice, the Authority must serve on the applicant a notice (a “warning notice”) which invites the applicant to make representations to the Authority about the modification notice within the period specified in the warning notice (being a period of not less than 21 days) beginning with the day on which the warning notice is served.
- (5) A warning notice must be accompanied by—
  - (a) a copy of the modification notice,
  - (b) a notice under paragraph 16 which complies with the requirements of sub-paragraph (6), and
  - (c) a copy of any information provided by the non-applicant to the Authority in response to a notice within paragraph 6(2)(b).
- (6) The notice under paragraph 16 must require the applicant to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
  - (a) the name and address of each person to whom sub-paragraph (7) applies, or
  - (b) if the applicant does not consider that there is any person to whom that sub-paragraph applies, a statement to that effect.
- (7) This sub-paragraph applies to a person—
  - (a) whom the applicant considers is a third party who would be affected by a provision of the proposed property scheme as modified by the modification notice, and
  - (b) whose name and address were not—
    - (i) specified in the application in accordance with paragraph 3(2)(c),
    - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b), or
    - (iii) specified in the modification notice under sub-paragraph (3).
- (8) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (5)(b), the Authority must serve on each person within sub-paragraph (9) a notice inviting that person to make representations to the Authority about the modification notice within the period specified in the notice (being a period of not less than 21 days) beginning with the day on which the notice is served.

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- (9) A person is within this sub-paragraph if the person's name and address were—
  - (a) specified in the application in accordance with paragraph 3(2)(c),
  - (b) provided to the Authority in response to a notice within paragraph 6(2)(b) or sub-paragraph (5)(b) of this paragraph, or
  - (c) specified in the modification notice.
- (10) A notice under sub-paragraph (8) must be accompanied by—
  - (a) a copy of the modification notice, and
  - (b) if a copy of the application has not previously been served on the person under paragraph 7(1), a copy of the application.
- 10 As soon as reasonably practicable after the Authority receives a modification notice, the Authority must publish a notice which—
  - (a) states that a modification notice has been served on the Authority in relation to an application,
  - (b) states the names of the applicant and the non-applicant party in relation to the application, and
  - (c) contains a general description of the modifications made to the application by the modification notice.

*Restricting or withdrawing the application*

- 11 (1) Where an application for a property scheme has been made, the applicant and the non-applicant party may, by a notice served by them jointly on the Authority—
  - (a) restrict the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed, or
  - (b) withdraw the application.
- (2) Where a notice is served under sub-paragraph (1) the Authority must serve a copy of the notice on any person served with a notice in relation to the application under paragraph 7(1) or 9(8).
- (3) A notice may be served under sub-paragraph (1) at any time before a property scheme is made in response to the application.
- (4) If, at any time, a notice specifying the preferred bidder, in relation to a tender exercise, is withdrawn under paragraph 35, any application for a property scheme previously made, in relation to that exercise, by the preferred bidder or by the asset owner (unless previously withdrawn under sub-paragraph (1)) is treated as withdrawn at that time.
- (5) Where an application is withdrawn by virtue of sub-paragraph (4), the Authority must serve notice to that effect on—
  - (a) the asset owner, and
  - (b) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).
- (6) If a notice is served under sub-paragraph (1) or an application is withdrawn by virtue of sub-paragraph (4), the Authority may direct the applicant or the non-applicant party (or both) to make a payment to a person within sub-paragraph (7) in respect of the costs incurred by such a person in connection with the application.
- (7) Those persons are—

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- (a) the Authority;
  - (b) any third party affected by a provision of the proposed property scheme.
- (8) A determination under sub-paragraph (6) must be made on the basis of what is just in all the circumstances of the case.
- (9) The Authority must serve notice of a direction given under sub-paragraph (6) on—
- (a) the applicant (if not the recipient of the direction),
  - (b) the non-applicant party (if not the recipient of the direction), and
  - (c) any person served with a notice in relation to the application under paragraph 7(1) or 9(8).
- (10) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.

*The Authority's functions in relation to applications*

- 12 (1) On an application for the making of a property scheme, the Authority must determine whether the proposed provision in relation to any property, right or liability specified in the application in accordance with paragraph 3(2)(a) is necessary or expedient for operational purposes.
- (2) Sub-paragraph (1) does not apply, in relation to any property, right or liability specified in the application, if the successful bidder and the asset owner agree that the proposed provision, in relation to that property, right or liability, is necessary or expedient for operational purposes.
- (3) If the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is not necessary or expedient for operational purposes—
- (a) it must refuse the application in relation to the property, right or liability, but
  - (b) it may serve on the applicant and the non-applicant party a notice proposing, in relation to the property, right or liability, alternative provision of a kind mentioned in paragraph 1(2).
- (4) A notice under sub-paragraph (3)(b) must—
- (a) invite the recipient to make representations to the Authority about the proposed alternative provision within the period specified in the notice (being not less than 21 days) beginning with the day on which the notice is served, and
  - (b) be accompanied by a notice under paragraph 16 which complies with the requirements of sub-paragraph (5).
- (5) The notice under paragraph 16 must require the recipient of the notice to provide the Authority, within the period specified in the notice (being not less than 7 days) beginning with the day on which the notice is served, with—
- (a) the name and address of each person to whom sub-paragraph (6) applies, or
  - (b) if the recipient does not consider that there is any such person, a statement to that effect.
- (6) This sub-paragraph applies to a person—
- (a) whom the recipient of the notice considers is a third party who would be affected by the Authority's proposed alternative provision, and

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- (b) whose name and address were not—
  - (i) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3), or
  - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b) or 9(5)(b).
- (7) As soon as reasonably practicable after receiving the information required by a notice within sub-paragraph (4)(b), the Authority must serve on each person within sub-paragraph (8)—
  - (a) if a copy of the application has not previously been served on the person under paragraph 7(1) or 9(8), a copy of the application,
  - (b) if a copy of any modification notice has not previously been served on the person under paragraph 9(8), a copy of the notice,
  - (c) a copy of the notice served under sub-paragraph (3)(b), and
  - (d) a notice inviting that person to make representations to the Authority about the proposed alternative provision within the period specified in the notice beginning with the day on which the notice is served.
- (8) A person is within this sub-paragraph if the person's name and address were—
  - (a) specified in the application in accordance with paragraph 3(2)(c) or in a modification notice under paragraph 9(3),
  - (b) provided to the Authority in response to a notice within sub-paragraph (4)(b) or paragraph 6(2)(b) or 9(5)(b).
- (9) The period specified under sub-paragraph (7)(d) must be not less than—
  - (a) in the case of a person whose name and address were provided to the Authority in response to a notice within sub-paragraph (4)(b), 21 days, and
  - (b) in any other case, 14 days.
- (10) Having considered any representations made in accordance with sub-paragraph (4)(a) or (7)(d), the Authority must determine whether the proposed alternative provision is necessary or expedient for operational purposes.
- (11) If—
  - (a) the Authority determines under sub-paragraph (1) that the proposed provision, in relation to any property, right or liability specified in the application, is necessary or expedient for operational purposes,
  - (b) the successful bidder and the asset owner agree that that is the case, or
  - (c) the Authority determines under sub-paragraph (10) that the proposed alternative provision, in relation to any property, right or liability, is necessary or expedient for operational purposes,the Authority must, subject to paragraphs 13 and 14(4), make a property scheme in relation to that property, right or liability.
- (12) In this paragraph “the proposed provision”, in relation to any property, right or liability, means the provision of a kind mentioned in paragraph 1(2) which the application proposes is made in relation to that property, right or liability (having regard to any modification under paragraph 9 or restriction under paragraph 11).
- 13 (1) On an application for a property scheme, no scheme may be made until—
  - (a) the offshore transmission licence has been issued to the successful bidder, and

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- (b) the relevant co-ordination licence holder has given the Authority, in accordance with the co-ordination licence, a completion notice in relation to the transmission system to which the property scheme relates.
- (2) For this purpose—
  - (a) a “completion notice”, in relation to a transmission system, is a notice which states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system;
  - (b) a property scheme relates to a transmission system if the property, rights and liabilities in respect of which the scheme makes provision of a kind mentioned in paragraph 1(2) are relevant to the performance by the successful bidder of its licensed functions in relation to that system.
- (3) Until such time as section 180 of the Energy Act 2004 (meaning of “high voltage line”) comes into force—
  - (a) the references in sub-paragraphs (1) and (2) to a transmission system include a system which, if that section were in force, would be a transmission system (“an offshore 132 kilovolt system”), and
  - (b) that section is to be treated as if it were in force for the purposes of determining under sub-paragraph (2)(a) whether it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use an offshore 132 kilovolt system.
- (4) In this paragraph—
  - “licensed functions” means—
    - (a) functions under the offshore transmission licence to which the tender exercise relates, and
    - (b) functions which the successful bidder has, in the capacity of holder of that licence, under or by virtue of any enactment;
  - “relevant co-ordination licence holder” means—
    - (a) the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held, or
    - (b) where the tender exercise is held for the purposes of a connection request within the meaning of section 6D(3)(b), the holder of a co-ordination licence to whom a connection request within the meaning of section 6D(3)(a) would have been made if section 180 of the Energy Act 2004 had been in force and, accordingly, the tender exercise had been held for the purposes of such a request.

#### *Terms of a property scheme*

- 14 (1) Where the Authority is required to make a property scheme, the terms of the scheme must be such as the successful bidder and the asset owner may agree or, if they fail to agree, as the Authority may determine.

This is subject to sub-paragraphs (2) to (9).

- (2) A property scheme must not provide for any provision to come into operation before the end of the period of 21 days beginning with the day on which the scheme is made.

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- (3) In determining the terms of a scheme under sub-paragraph (1), the Authority must, in particular, determine whether the scheme should include provision for compensation to be paid—
    - (a) by the successful bidder to the asset owner, or
    - (b) by the asset owner to the successful bidder,and, if so, what that provision should be.
  - (4) The Authority may not include in a property scheme provision which would adversely affect a third party unless it determines that it is necessary or expedient for operational purposes for the provision to be made.
  - (5) Where the Authority includes in a property scheme provision which would adversely affect a third party, the Authority must determine whether the scheme should include provision for compensation and, if so, what that provision should be.
  - (6) The Authority may include in a property scheme provision for payments to be made by the successful bidder or the asset owner (or both) in respect of costs incurred in connection with the scheme (including the application for the scheme) by—
    - (a) the Authority,
    - (b) the successful bidder,
    - (c) the asset owner, or
    - (d) a third party affected by a provision of the property scheme.
  - (7) For the purposes of making a determination under sub-paragraph (6), the Authority may have regard to the conduct of the parties mentioned in sub-paragraph (6)(a) to (d).
  - (8) Any sums received by the Authority under sub-paragraph (6) are to be paid into the Consolidated Fund.
  - (9) For the purposes of this paragraph, a provision of a property scheme adversely affects a third party if that party—
    - (a) is affected by the provision (see paragraph 38(2)), and
    - (b) does not consent to the making of the provision by means of the scheme.
- 15 (1) A determination under paragraph 14, so far as relating to any financial matter, must be made on the basis of what is just in all the circumstances of the case.
- (2) A determination under paragraph 14, so far as relating to any other matter, must be made on the basis of what appears to the Authority to be appropriate in all the circumstances of the case having regard, in particular, to what is necessary or expedient for operational purposes.

#### *Additional powers of the Authority*

- 16 (1) The Authority may, by notice, require any of the following persons to provide information or assistance in connection with the performance by the Authority of its functions under this Schedule—
- (a) the preferred bidder in relation to a tender exercise;
  - (b) the successful bidder in relation to a tender exercise;
  - (c) the asset owner in relation to a property scheme or an application for such a scheme;
  - (d) the holder of a co-ordination licence;

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- (e) any third party who is or may be affected by a provision of a property scheme or a proposed property scheme.
- (2) If the Authority considers that any other person may be able to provide it with information in respect of any provision of a property scheme or proposed property scheme, it may, by notice, require the person to provide it with such information.
- (3) A notice under this paragraph may specify the period within which the information or assistance is to be provided.
- (4) If at any time it appears to the Authority that a person has failed to comply with a requirement under sub-paragraph (1) or (2), the Authority may make an application to the court under this paragraph.
- (5) If, on an application under this paragraph, the court decides that the person has failed to comply with the requirement, it may order the person to take such steps as the court directs for securing that the requirement is complied with.
- (6) In this paragraph “the court” means—
  - (a) in the case of an application made in England and Wales, the High Court, and
  - (b) in the case of an application made in Scotland, the Court of Session.
- 17 The Authority may engage consultants for the purpose of advising it in relation to the making of a determination under this Schedule.

#### *Notification of property scheme*

- 18 (1) This paragraph applies where the Authority makes a property scheme.
- (2) The Authority must, as soon as reasonably practicable, serve a copy of the scheme on—
  - (a) the successful bidder,
  - (b) the asset owner, and
  - (c) each third party affected by the scheme whose name and address was—
    - (i) specified in the application for the scheme in accordance with paragraph 3(2)(c) or in a modification notice in relation to that application in accordance with paragraph 9(3), or
    - (ii) provided to the Authority in response to a notice within paragraph 6(2)(b), 9(5)(b) or 12(4)(b).
- (3) The Authority must, as soon as reasonably practicable, publish a notice which—
  - (a) states that a property scheme has been made,
  - (b) states the names of the successful bidder and the asset owner in relation to the scheme, and
  - (c) contains a general description of the provision made by the scheme.

#### *Refusal of application or part of application*

- 19 (1) This paragraph applies where the Authority—
  - (a) determines to refuse an application for a property scheme so far as it relates to any property, right or liability specified in the application in accordance with paragraph 3(2)(a), or

**Status:** Point in time view as at 01/04/2009. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

- (b) determines not to make any alternative provision proposed under paragraph 12(3)(b) in relation to any such property, right or liability.
- (2) The Authority must, as soon as reasonably practicable, serve a notice giving details of the determination on each person mentioned in paragraph 18(2)(a) to (c).
- (3) The Authority may direct the successful bidder or the asset owner to make a payment in respect of the costs incurred in connection with the application by—
  - (a) the Authority,
  - (b) the successful bidder,
  - (c) the asset owner, or
  - (d) a third party affected by a provision of the proposed property scheme or any alternative provision proposed under paragraph 12(3)(b).
- (4) The Authority must serve notice of a direction given under sub-paragraph (3) on—
  - (a) the successful bidder (if not the recipient of the direction),
  - (b) the asset owner (if not the recipient of the direction), and
  - (c) any person served with a notice in relation to the application under paragraph 7(1), 9(8) or 12(7).
- (5) A determination under sub-paragraph (3) must be made on the basis of what is just in all the circumstances of the case.
- (6) Any sums received by the Authority under sub-paragraph (3) are to be paid into the Consolidated Fund.

#### *Effect of property scheme*

- 20 A property scheme, by virtue of this paragraph, has effect according to its terms.
- 21 (1) A transaction of any description effected by or under a property scheme has effect subject to the provisions of any enactment which provides for transactions of that description to be registered in any statutory register.
- (2) Subject to that, a transaction of any description effected by or under a property scheme is binding on all persons, despite the fact that it would, apart from this provision, have required the consent or concurrence of any person.
- (3) In this paragraph “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.
- 22 Where—
  - (a) an amount of compensation is owed to a person in accordance with a property scheme, or
  - (b) an amount in respect of costs is owed to a person in accordance with such a scheme or with a direction under paragraph 11(6) or 19(3),the amount may be recovered by that person.

#### *Review of determinations*

- 23 (1) Any person affected by a determination of the Authority under this Schedule may apply to the Competition Appeal Tribunal for a review of the determination.
- (2) An application under sub-paragraph (1) may be made—

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- (a) during the relevant appeal period, or
  - (b) with the permission of the Competition Appeal Tribunal, at a later time.
- (3) The relevant appeal period means—
  - (a) where the application is in respect of a determination relating to a property scheme which has been made by the Authority, 21 days beginning with the day on which a notice in respect of the scheme is published under paragraph 18(3);
  - (b) in any other case, 21 days beginning with the day on which the determination was made.
- (4) On an application under sub-paragraph (1), the Competition Appeal Tribunal may by order—
  - (a) dismiss the application, or
  - (b) make such other determination as it considers appropriate.
- 24 (1) This paragraph applies where—
  - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b), and
  - (b) the Authority has not made a property scheme in relation to the property, rights or liabilities concerned.
- (2) The Tribunal may include in the order provision requiring the Authority to make a property scheme in relation to that property, or those rights and liabilities.
- (3) Where paragraph 14 applies because of provision under this paragraph, anything the Tribunal has determined is to be treated for the purposes of that paragraph as determined by the Authority.
- 25 (1) This paragraph applies where—
  - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),
  - (b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and
  - (c) the scheme has not come into operation.
- (2) Where the Tribunal's determination is that provision of a kind mentioned in paragraph 1(2) is not, in relation to the property, rights or liabilities concerned, necessary or expedient for operational purposes, it may include in the order provision quashing the scheme.
- (3) In any other case, the Tribunal may include in the order—
  - (a) provision for the scheme to have effect with such amendments with respect to any matter dealt with by the Authority's determination as it thinks fit, and
  - (b) to the extent that the Authority's determination dealt with any financial matter, provision requiring the Authority to redetermine the matter in accordance with the order and to amend the scheme accordingly.
- 26 (1) This paragraph applies where—
  - (a) the Competition Appeal Tribunal makes an order under paragraph 23(4)(b),
  - (b) the Authority has made a property scheme in relation to the property, rights or liabilities concerned, and
  - (c) the scheme has come into operation.

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- (2) The Tribunal may include in the order such provision as it thinks fit for the purpose of doing justice between—
    - (a) the successful bidder,
    - (b) the person who was the asset owner immediately before the scheme came into operation, and
    - (c) any third party affected by the scheme,in the light of its determination.
  - (3) Without prejudice to the generality of sub-paragraph (2), the Tribunal may include in the order—
    - (a) provision for the transfer of anything transferred by the scheme;
    - (b) provision for the surrender or extinction of rights;
    - (c) provision for the payment of compensation to the successful bidder or the person who was the asset owner immediately before the scheme came into operation;
    - (d) provision for the payment of compensation to a third party affected by the scheme;
    - (e) provision about the payment of costs of the kind mentioned in paragraph 14(6).
  - (4) Any sums received by the Authority by virtue of sub-paragraph (3)(e) are to be paid into the Consolidated Fund.
- 27 (1) An order under paragraph 23(4)(b) may include provision for the award of interest at such rate and for such period as the Competition Appeal Tribunal thinks fit.
- (2) Where the application made under paragraph 23(1) is for a review of a determination under paragraph 11(6) or 19(3), the Tribunal may include in an order under paragraph 23(4)(b) one or both of the following—
  - (a) provision amending or revoking any direction made as a result of the determination;
  - (b) provision equivalent to any direction which could have been made by the Authority under paragraph 11(6) or 19(3).
- Interim arrangements pending review of determination*
- 28 (1) This paragraph applies where—
  - (a) a person makes an application under paragraph 23(1) for the review of a determination, and
  - (b) the Authority has not made a property scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by the successful bidder or the asset owner make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.
- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power to make provision for the successful bidder to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period, and on such terms, as the Tribunal thinks fit.
- 29 (1) This paragraph applies where—

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- (a) a person makes an application under paragraph 23(1) for the review of a determination, and
  - (b) the Authority has made a property scheme in relation to the property, rights or liabilities to which the determination relates.
- (2) The Competition Appeal Tribunal may, at any time before an order is made under paragraph 23(4), on application by—
  - (a) the successful bidder,
  - (b) if the scheme has not come into operation, the asset owner,
  - (c) if the scheme has come into operation, the person who was the asset owner immediately before it did so, or
  - (d) a third party who is affected by any provision of the property scheme,
 make such interim arrangements as it thinks fit with respect to the property, rights or liabilities concerned.
- (3) Without prejudice to the generality of sub-paragraph (2), the power under that sub-paragraph includes, in particular, power—
  - (a) to make provision postponing or suspending the operation of any provision of the scheme for such period, and on such terms, as the Tribunal thinks fit;
  - (b) to make provision for the successful bidder, or an applicant within sub-paragraph (2)(c), to have access to, or otherwise to enjoy the benefit of, any of the property or rights concerned for such period and on such terms as the Tribunal thinks fit.
- 30 In exercising its powers under paragraph 28 or 29, the Competition Appeal Tribunal must have regard, in particular, to what is necessary or expedient for operational purposes.
- 31 Paragraphs 28 or 29 are without prejudice to any powers of the Competition Appeal Tribunal to make orders on an interim basis under rules under section 15 of the Enterprise Act 2002 (c. 40).
- 32 (1) If an order under paragraph 28 or 29 is registered in England and Wales in accordance with rules of court or any practice direction, it is enforceable as an order of the High Court.
- (2) An order under paragraph 28 or 29 may be recorded for execution in the Books of Council and Session and is to be enforceable accordingly.
- (3) Subject to rules of court or any practice direction, an order under paragraph 28 or 29 may be registered or recorded for execution by a person entitled to any right under the interim arrangements for which the order makes provision.
- (4) Sub-paragraphs (1) to (3) apply to an order on an interim basis made under rules under section 15 of the Enterprise Act 2002 in connection with an application under paragraph 23(1) as they apply to an order under paragraph 28 or 29.
- Appeal on a point of law*
- 33 (1) An appeal lies on any point of law arising from a decision of the Competition Appeal Tribunal under this Schedule to the appropriate court.
- (2) An appeal under this paragraph requires the permission of the Tribunal or of the appropriate court.

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- (3) In this paragraph “the appropriate court” means—
- (a) in the case of Tribunal proceedings in England and Wales, the Court of Appeal, and
  - (b) in the case of Tribunal proceedings in Scotland, the Court of Session.

*Change of asset owner during application process*

- 34 (1) Where any property, rights or liabilities specified in an application in accordance with paragraph 3(2)(a) are transferred by the asset owner to another person (“the new asset owner”) after the application is made, this Schedule has effect as if—
- (a) references to the asset owner included the new asset owner, and
  - (b) anything done by or in relation to the asset owner had been done by or in relation to the new asset owner.
- (2) In the case of property, rights or liabilities treated as specified in an application by virtue of paragraph 9(2), sub-paragraph (1) applies as if for “the application is made” there were substituted “the modification notice is served on the Authority”.

*The preferred bidder*

- 35 (1) The preferred bidder, in relation to a tender exercise, is the person whose name and address is specified in a notice which has been published under sub-paragraph (2) (and has not been withdrawn under sub-paragraph (4)).
- (2) Where a tender exercise is held, as soon as the Authority is satisfied that it will grant the offshore transmission licence to a particular person if certain matters are resolved to the Authority's satisfaction, it must publish a notice to that effect.
- (3) The notice must—
- (a) specify the name and address of the person, and
  - (b) describe, in general terms, those matters.
- (4) The Authority may withdraw a notice under sub-paragraph (2) by publishing a notice to that effect.
- (5) A notice published under sub-paragraph (2) must be withdrawn before a subsequent notice may be published under that sub-paragraph in relation to the same tender exercise.

*The successful bidder*

- 36 (1) The successful bidder, in relation to a tender exercise, is the person to whom, as a result of that exercise, the offshore transmission licence has been or is to be granted.
- (2) Where a tender exercise is held, as soon as the Authority determines to grant the offshore transmission licence to a person, it must publish a notice to that effect.
- (3) The notice must specify the name and address of the successful bidder.

*Associated bodies corporate*

- 37 (1) For the purposes of this Schedule, one body corporate is associated with another if one of them controls the other or a third body corporate controls both of them,

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and sub-paragraphs (2) to (6) set out the circumstances in which one body corporate (“A”) controls another (“B”).

- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
  - (a) one half or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
  - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
  - (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In sub-paragraph (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interest in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of sub-paragraphs (2) to (5), A controls B, A is to be taken to possess—
  - (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this sub-paragraph).

### *Interpretation*

38 (1) In this Schedule—

“the asset owner”—

- (a) in relation to an application for a property scheme, means the owner of the property, rights and liabilities in relation to which provision of a kind mentioned in paragraph 1(2) is proposed to be included in the scheme;
- (b) in relation to a property scheme, means the owner of the property, rights and liabilities in relation to which provision of such a kind is included in the scheme;

“co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place and the whole or a part of which is at a relevant place;

“functions” includes powers and duties;

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“modification notice” is to be construed in accordance with paragraph 9;

“non-applicant party” means—

(a) in the case of an application made by the preferred bidder or the successful bidder, the asset owner, and

(b) in the case of an application made by the asset owner, the successful bidder or, if a notice has not yet been published under paragraph 36, the preferred bidder;

“operational purposes” means the purposes of performing any functions which the successful bidder has, or may in future have—

(a) under or by virtue of the offshore transmission licence which has been, or is to be, granted as a result of the tender exercise, or

(b) under or by virtue of any enactment, in the successful bidder's capacity as holder of the licence;

“preferred bidder”, in relation to a tender exercise, is to be construed in accordance with paragraph 35;

“property scheme” is to be construed in accordance with paragraph 1;

“relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone;

“successful bidder”, in relation to a tender exercise, is to be construed in accordance with paragraph 36;

“tender exercise” has the same meaning as in section 6D;

“third party”, in relation to a property scheme or proposed property scheme in connection with a tender exercise, means a person other than the preferred bidder, the successful bidder, or the asset owner.

- (2) For the purposes of this Schedule, a provision of a property scheme affects a third party if that party's consent or concurrence would be required to the making of the provision otherwise than by means of the scheme.”

## SCHEDULE 3

Section 77

### PETROLEUM LICENCES: AMENDMENTS TO MODEL CLAUSES

#### PART 1

##### PETROLEUM (PRODUCTION) (LANDWARD AREAS) REGULATIONS 1995

- 1 (1) Schedule 3 to the Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436) is amended as follows.

- (2) After clause 8 (consequences of determination or surrender) insert—

##### **Provision of contact details to Minister**

“8A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.

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- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, documents should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
  - (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 17 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 38(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 38 insert—

#### **Power of partial revocation**

- “38A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 38(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 38(3) are satisfied in relation to one of those persons.

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- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 38 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I40** Sch. 3 para. 1 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

## PART 2

### PETROLEUM (CURRENT MODEL CLAUSES) ORDER 1999

- 2 This Part of this Schedule contains amendments to the Petroleum (Current Model Clauses) Order 1999 (S.I. 1999/160).

#### Commencement Information

**I41** Sch. 3 para. 2 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 3 (1) Part 2 of Schedule 2 (seaward production licences) is amended as follows.
- (2) After clause 7 (area surrendered) insert—

#### Provision of contact details to Minister

- “7A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and

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- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 17 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 39(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 39 insert—

#### **Power of partial revocation**

- “39A(1) This clause applies in a case where two or more persons are the Licensee and—
  - (a) an event mentioned in clause 39(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 39(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 39 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

#### Commencement Information

**I42** Sch. 3 para. 3 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 4 (1) Part 2 of Schedule 3 (landward production licences) is amended as follows.
- (2) After clause 7 (areas surrendered) insert—

#### Provision of contact details to Minister

“7A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.

(2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.

(3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.

(4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—

- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 17 (abandonment and plugging of wells)—

- (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
- (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

(5B) The Licensee shall comply with any notice under paragraph (5A).

(5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

(5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and

- (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.

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- (4) In clause 37(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 37 insert—

#### **Power of partial revocation**

- “37A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 37(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 37(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 37 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked”

#### **Commencement Information**

**I43** Sch. 3 para. 4 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 5 (1) Part 2 of Schedule 4 (landward production licences) is amended as follows.
- (2) After clause 7 (consequences of determination or surrender by licensee) insert—

#### **Provision of contact details to Minister**

- “7A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—

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- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 17 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 38(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignment of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 38 insert—

#### **Power of partial revocation**

- “38A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 38(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 38(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 38 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or

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persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I44** Sch. 3 para. 5 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 6 (1) Part 2 of Schedule 5 (seaward production licences) is amended as follows.
- (2) After clause 7 (areas surrendered) insert—

#### Provision of contact details to Minister

- “7A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 17 (abandonment and plugging of wells)—

    - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
    - (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

(5B) The Licensee shall comply with any notice under paragraph (5A).

(5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

(5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and

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- (c) in paragraph (6) after “the Minister” (in the first place) insert “, or in accordance with a notice under paragraph (5A) ”.
- (4) In clause 40(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 40 insert—

### **Power of partial revocation**

“40A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 40(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 40(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 40 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

### **Commencement Information**

**I45** Sch. 3 para. 6 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 7 (1) Part 2 of Schedule 6 (seaward production licences) is amended as follows.
- (2) After clause 6 (areas surrendered) insert—

### **Provision of contact details to Minister**

- “6A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.

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- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
  - (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 16 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 39(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 39 insert—

#### **Power of partial revocation**

- “39A(1) This clause applies in a case where two or more persons are the Licensee and—
  - (a) an event mentioned in clause 39(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 39(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 39 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.

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- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I46** Sch. 3 para. 7 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 8 (1) Part 2 of Schedule 8 (landward development licences) is amended as follows.
- (2) After clause 6 (consequences of determination or surrender by licensee) insert—

#### Provision of contact details to Minister

- “6A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 15 (abandonment and plugging of wells)—

    - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
    - (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

(5B) The Licensee shall comply with any notice under paragraph (5A).

(5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

(5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum

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within the period of one month ending with the day on which the notice is given.”, and

- (c) in paragraph (6) after “the Minister” (in the first place) insert “, or in accordance with a notice under paragraph (5A), ”.

- (4) In clause 36(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.

- (5) After clause 36 insert—

#### **Power of partial revocation**

“36A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 36(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 36(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 36 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### **Commencement Information**

**I47** Sch. 3 para. 8 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 9 (1) Part 2 of Schedule 9 (seaward production licences) is amended as follows.
- (2) After clause 8 (areas surrendered) insert—

#### **Provision of contact details to Minister**

- “8A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance

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with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.

- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 19 (abandonment and plugging of wells)—
- (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” (in the first place) insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 42(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 42 insert—

### **Power of partial revocation**

- “42A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 42(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 42(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 42 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or

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liability incurred by the person or imposed under the terms and conditions of this licence.

- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I48** Sch. 3 para. 9 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 10 (1) Part 2 of Schedule 10 (seaward production licences) is amended as follows.  
 (2) After clause 8 (areas surrendered) insert—

#### Provision of contact details to Minister

- “8A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 19 (abandonment and plugging of wells)—
- (a) in paragraph (2), for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
- “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
- (5B) The Licensee shall comply with any notice under paragraph (5A).
- (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

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- (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
- (c) in paragraph (6) after “the Minister” (in the first place) insert “, or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 42(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 42 insert—

#### **Power of partial revocation**

- “42A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 42(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 42(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 42 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### **Commencement Information**

**I49** Sch. 3 para. 10 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 11 (1) Part 2 of Schedule 11 (seaward exploration licences) is amended as follows.
- (2) After clause 5 (right of licensee to determine licence) insert—

#### **Provision of contact details to Minister**

- “5A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.

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- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
  - (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 7 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “(5) and” substitute “ (4A) to ”, and
  - (b) after paragraph (4) insert—
    - “(4A) The Minister may at any time before the expiry or determination of this licence give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned within the period specified in the notice (but this paragraph is subject to paragraphs (4C) and (4D)).
    - (4B) The Licensee shall comply with any notice under paragraph (4A).
    - (4C) A notice under paragraph (4A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence.
    - (4D) A notice under paragraph (4A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”
- (4) After clause 21 (power of revocation) insert—

#### **Power of partial revocation**

- “21A(1) This clause applies in a case where—
  - (a) two or more persons are the Licensee, and
  - (b) an event mentioned in clause 21(2)(c), (d), (e) or (f) occurs in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 21 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or

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persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I50** Sch. 3 para. 11 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 12 (1) Part 2 of Schedule 12 (landward exploration licences) is amended as follows.
- (2) After clause 6 (automatic termination of licence) insert—

#### Provision of contact details to Minister

- “6A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 10 (abandonment and plugging of wells)—
- (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
- (b) after paragraph (5) insert—
- “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5), within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
- (5B) The Licensee shall comply with any notice under paragraph (5A).
- (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
- (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and

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- (c) in paragraph (6) after “the Minister” (in the first place) insert “, or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 28(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 28 insert—

#### **Power of partial revocation**

“28A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 28(2)(b), (c), (d) or (e) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 28(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 28 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### **Commencement Information**

**I51** Sch. 3 para. 12 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 13 (1) Part 2 of Schedule 13 (landward appraisal licences) is amended as follows.
- (2) After clause 6 (consequences of determination or surrender by licensee) insert—

#### **Provision of contact details to Minister**

- “6A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.

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**Status:** Point in time view as at 01/04/2009. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

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- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
  - (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 14 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee must comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “the Minister” insert “ , or in accordance with a notice under paragraph (5A), ”.
- (4) In clause 33(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 33 insert—

#### **Power of partial revocation**

- “33A(1) This clause applies in a case where two or more persons are the Licensee and—
  - (a) an event mentioned in clause 33(2)(c), (d), (e) or (f) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 33(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 33 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.

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- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I52** Sch. 3 para. 13 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 14 (1) Part 2 of Schedule 14 (landward development licences) is amended as follows.  
 (2) After clause 6 (consequences of determination or surrender by licensee) insert—

#### Provision of contact details to Minister

- “6A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 15 (abandonment and plugging of wells)—
- (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
- “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
- (5B) The Licensee shall comply with any notice under paragraph (5A).
- (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
- (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum

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within the period of one month ending with the day on which the notice is given.”, and

- (c) in paragraph (6) after “the Minister” (in the first place) insert “, or in accordance with a notice under paragraph (5A), ”.

- (4) In clause 35(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.

- (5) After clause 35 insert—

### **Power of partial revocation**

“35A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 35(2)(c), (d), (e) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 35(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 35 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

### **Commencement Information**

**I53** Sch. 3 para. 14 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

## **PART 3**

### **PETROLEUM LICENSING (EXPLORATION AND PRODUCTION) (SEAWARD AND LANDWARD AREAS) REGULATIONS 2004**

- 15 This Part of this Schedule amends the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (S.I. 2004/352).

### **Commencement Information**

**I54** Sch. 3 para. 15 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 16 (1) Schedule 1 (exploration licences) is amended as follows.
- (2) After clause 5 (right of licensee to determine licence) insert—

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)*

### **Provision of contact details to Minister**

- “5A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 7 (abandonment and plugging of wells)—

    - (a) in paragraph (2) for “(5) and” substitute “ (4A) to ”, and
    - (b) after paragraph (4) insert—

“(4A) The Minister may at any time before the expiry or determination of this licence give the Licensee a notice requiring a Well drilled pursuant to this licence to be plugged and abandoned within the period specified in the notice (but this paragraph is subject to paragraphs (4C) and (4D)).

(4B) The Licensee shall comply with any notice under paragraph (4A).

(4C) A notice under paragraph (4A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area in which the Well is drilled.

(4D) A notice under paragraph (4A) may be given only in relation to a Well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”

(4) After clause 20 (power of revocation) insert—

### **Power of partial revocation**

- “20A(1) This clause applies in a case where—
- (a) two or more persons are the Licensee, and
  - (b) an event mentioned in clause 20(2)(c), (d), (e), (ee) or (f) occurs in relation to one of those persons.

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- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 20 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I55** Sch. 3 para. 16 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 17 (1) Schedule 2 (frontier areas: production licences without break clause) is amended as follows.
- (2) After clause 9 (areas surrendered) insert—

#### Provision of contact details to Minister

- “9A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 16 (abandonment and plugging of wells)—

    - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
    - (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

- (5B) The Licensee shall comply with any notice under paragraph (5A).
- (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.
- (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
- (c) in paragraph (6) after “Subject to paragraphs” insert “ (5A) to (5D), ”.
- (4) In clause 38(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 38 (power of revocation) insert—

#### **Power of partial revocation**

“38A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 38(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons, or
- (b) the conditions specified in clause 38(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 38 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### **Commencement Information**

**I56** Sch. 3 para. 17 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 18 (1) Schedule 3 (frontier areas: production licences with break clause) is amended as follows.
- (2) After clause 10 (areas surrendered) insert—

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### Provision of contact details to Minister

- “10A(1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
  - (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 17 (abandonment and plugging of wells)—

    - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
    - (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

(5B) The Licensee shall comply with any notice under paragraph (5A).

(5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

(5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and

    - (c) in paragraph (6) after “Subject to paragraphs” insert “ (5A) to (5D), ”.

(4) In clause 39(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.

(5) After clause 39 (power of revocation) insert—

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

### Power of partial revocation

- “39A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 39(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 39(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 39 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### Commencement Information

**I57** Sch. 3 para. 18 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 19 (1) Schedule 4 (production licences for areas other than frontier areas) is amended as follows.
- (2) After clause 8 (areas surrendered) insert—

### Provision of contact details to Minister

- “8A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.
- (2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.
- (3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.
- (4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—
- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and

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- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”
- (3) In clause 15 (abandonment and plugging of wells)—
  - (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
  - (b) after paragraph (5) insert—
    - “(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).
    - (5B) The Licensee shall comply with any notice under paragraph (5A).
    - (5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area or the part of the area in which the well is drilled.
    - (5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and
  - (c) in paragraph (6) after “Subject to paragraphs” insert “ (5A) to (5D), ”.
- (4) In clause 37(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 37 (power of revocation) insert—

#### **Power of partial revocation**

- “37A(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 37(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 37(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 37 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
  - (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
  - (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

**Status:** Point in time view as at 01/04/2009. This version of this Act contains provisions that are not valid for this point in time.

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#### Commencement Information

**I58** Sch. 3 para. 19 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

- 20 (1) Schedule 6 (exploration and development licences) is amended as follows.
- (2) After clause 8 (consequences of determination or surrender by licensee) insert—

#### Provision of contact details to Minister

“8A (1) A notice, direction or other document authorised or required (in whatever terms) to be given to the Licensee by virtue of this licence is treated as given to the Licensee if it is given to the person specified by the Licensee under paragraph (2) at the address so specified.

(2) The Licensee must supply the Minister with the name and address of a person to whom notices, directions and other documents are to be given.

(3) The Licensee must ensure that, where there is a change in the person to whom, or the address to which, information should be sent in accordance with paragraph (2), the Minister is notified of the change as soon as is reasonably practicable.

(4) If the Licensee fails to comply with paragraph (2) the Minister may give the Licensee a notice which—

- (a) requires the Licensee to comply with paragraph (2) within the period of one month beginning with the date of the notice, and
- (b) states that, if the Licensee fails to do so, the Licensee will be treated as having supplied under paragraph (2) the name and address specified by the Minister in the notice.”

(3) In clause 15 (abandonment and plugging of wells)—

- (a) in paragraph (2) for “The” substitute “ Subject to paragraph (5B), the ”,
- (b) after paragraph (5) insert—

“(5A) The Minister may at any time give the Licensee a notice requiring a well drilled pursuant to this licence to be plugged and abandoned in accordance with paragraph (5) within the period specified in the notice (but this paragraph is subject to paragraphs (5C) and (5D)).

(5B) The Licensee shall comply with any notice under paragraph (5A).

(5C) A notice under paragraph (5A) may not be given less than one month before the expiry or determination of the Licensee's rights under this licence in relation to the area, or the part of the area, in which the well is drilled.

(5D) A notice under paragraph (5A) may be given only in relation to a well from which the Licensee has not extracted any petroleum within the period of one month ending with the day on which the notice is given.”, and

- (c) in paragraph (6) after “Subject to paragraphs” insert “ (5A) to (5D), ”.

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- (4) In clause 36(4) (power of revocation: change of control) after “when this licence was granted” insert “ (or, if there has been an assignment or assignation of rights conferred by this licence, when those rights were assigned to the Licensee) ”.
- (5) After clause 36 (power of revocation) insert—

#### **Power of partial revocation**

“36A(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 36(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons, or
  - (b) the conditions specified in clause 36(3) are satisfied in relation to one of those persons.
- (2) Where this clause applies, the Minister may exercise the power of revocation in clause 36 to revoke the licence in so far as it applies to the person mentioned in paragraph (1)(a) or (b).
- (3) If the Minister exercises the power in paragraph (2), the rights granted to the person under this licence cease, but without prejudice to any obligation or liability incurred by the person or imposed under the terms and conditions of this licence.
- (4) Where this licence is revoked in relation to one person under this clause, it continues to have effect in respect of the other person who constitutes, or persons who together constitute, the Licensee and in relation to whom it is not revoked.”

#### **Commencement Information**

**I59** Sch. 3 para. 20 in force at 26.1.2009 by S.I. 2009/45, art. 2(c)(ii)

## **SCHEDULE 4**

Section 91

### **SMART METERS: LICENSABLE ACTIVITIES**

#### **PART 1**

##### **GAS**

- 1 After section 41H of the Gas Act 1986 (c. 44), insert—

#### **“41HA New licensable activities: smart meters**

- (1) The Secretary of State may by order amend this Part so as to provide—
- (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or

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- (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 5(1).
- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section—
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### **41HB Section 41HA: supplemental**

- (1) Before making an order under section 41HA, the Secretary of State must consult—
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA comes into force.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

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- (3) An order under section 41HA may not be made unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Subsections (1) to (3) of section 47 apply in relation to orders under section 41HA as they apply in relation to regulations under this Part.

#### **41HC Competitive tenders for licences for new licensable activities**

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 41HA(1)(a).
- (3) The regulations may—
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;
  - (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and an electricity licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision—
  - (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section—
  - “electricity licence” means a licence for an activity to which an order under section 56FA(1)(a) of the Electricity Act 1989 applies;
  - “prescribed” means prescribed in or determined under regulations under this section;

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)*

“tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;

“tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.

- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.”

## PART 2

### ELECTRICITY

- 2 After section 56F of the Electricity Act 1989 (c. 29) insert—

**“56FA New licensable activities: smart meters**

- (1) The Secretary of State may by order amend this Part so as to provide—
  - (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  - (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section—
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—
  - (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;

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- (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### **56FB Section 56FA: supplemental**

- (1) Before making an order under section 56FA, the Secretary of State must consult—
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after the end of the period of 5 years beginning with the day on which section 56FA comes into force.
- (3) An order under section 56FA may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, each House of Parliament.
- (4) Section 60 applies in relation to an order under this section as it applies in relation to regulations under this Part.

#### **56FC Competitive tenders for licences for new licensable activities**

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 56FA(1)(a).
- (3) The regulations may—
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;
  - (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;

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- (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and a gas licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision—
- (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section—
- “gas licence” means a licence for an activity to which an order under section 41HA of the Gas Act 1986 applies;
- “prescribed” means prescribed in or determined under regulations under this section;
- “tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;
- “tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.
- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.”

SCHEDULE 5 Section 107

MINOR AND CONSEQUENTIAL AMENDMENTS

VALID FROM 06/04/2009	
	<i>Pipe-lines Act 1962 (c. 58)</i>
1	In section 54 of the Pipe-lines Act 1962 (offences by corporations), in subsection (1) after “any of the provisions of this Act” insert “ (other than section 10H) ”.

	<i>Gas Act 1986 (c. 44)</i>
2	In section 64(2) of the Gas Act 1986 (orders) after “41C” insert “ , 41HA, ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

#### Commencement Information

**I60** Sch. 5 para. 2 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

#### *Electricity Act 1989 (c. 29)*

- 3 In section 25 of the Electricity Act 1989 (orders for securing compliance), in subsection (8), in the definition of “relevant requirement” for “sections 32 to 32C” substitute “ sections 32 to 32M ”.

#### Commencement Information

**I61** Sch. 5 para. 3 in force at 1.4.2009 by S.I. 2009/45, art. 3(c)(i)

- 4 In section 47 of that Act (general functions of the Authority)—
- (a) in subsection (1A) after “microgeneration” insert “ or small-scale low-carbon generation ”, and
  - (b) for subsection (1B) substitute—
- “(1B) In subsection (1A)—
- “microgeneration” has the same meaning as in the Climate Change and Sustainable Energy Act 2006;
- “small-scale low-carbon generation” has the same meaning as in section 41 of the Energy Act 2008.”

#### Commencement Information

**I62** Sch. 5 para. 4 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

- 5 In section 106 of that Act (regulations and orders), after subsection (1) insert—
- “(1A) Any power of the Scottish Ministers to make orders under section 32 is exercisable by statutory instrument.”
- 6 In section 106(2)(b) of that Act (regulations and orders) for “or 56A” substitute “ , 56A or 56FA ”.

#### Commencement Information

**I63** Sch. 5 para. 6 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

#### *Petroleum Act 1998 (c. 17)*

VALID FROM 06/04/2009

- 7 The Petroleum Act 1998 is amended as follows.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

VALID FROM 06/04/2009

8 In section 5(9) (alteration of licences) for “an instrument under seal” substitute “deed”.

9 In section 31(1) (notices: supplementary provision) omit “(d) or”.

**Commencement Information**

**I64** Sch. 5 para. 9 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

10 In section 34 (revision of programmes)—  
 (a) in subsection (2)(a), after “(b)” insert “(ba), ”, and  
 (b) in subsection (3) omit “(d) or”.

**Commencement Information**

**I65** Sch. 5 para. 10 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

11 In section 45 (interpretation), in the definition of “submarine pipeline” after “which is” insert “, or is intended to be established, ”.

**Commencement Information**

**I66** Sch. 5 para. 11 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

*Utilities Act 2000 (c. 27)*

12 The Utilities Act 2000 is amended as follows.

**Commencement Information**

**I67** Sch. 5 para. 12 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

13 In section 33 (standard conditions of electricity licences), in subsection (1)—  
 (a) after paragraph (b) omit “, or”, and  
 (b) after paragraph (c) insert “, or  
 (d) under section 41, 84, 88 or 97 of the Energy Act 2008 (power to amend licence conditions).”

**Commencement Information**

**I68** Sch. 5 para. 13 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

14 In section 81 (standard conditions of gas licences), in subsection (2) for “or under the Energy Act 2004” substitute “, under the Energy Act 2004 or under section 88 or 94 of the Energy Act 2008 (power to amend licence conditions) ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

#### Commencement Information

**I69** Sch. 5 para. 14 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

- 15 In section 105 (general restrictions on disclosure of information)—
- (a) in subsection (1)(a), omit the words from “or section 184(5)” to the end and insert “, section 184(5) or 185(5) of the Energy Act 2004 or section 41 or 100 of the Energy Act 2008; ”,
  - (b) in subsection (3)(a), after “2004” insert “ sections 41 to 43 or section 100 of the Energy Act 2008 ”, and
  - (c) in subsection (8)(a) after “section” (in the second place) insert “ 32J or ”.

#### Commencement Information

**I70** Sch. 5 para. 15(a)(b) in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

**I71** Sch. 5 para. 15(c) in force at 1.4.2009 by S.I. 2009/45, art. 3(c)(i)

#### Energy Act 2004 (c. 20)

- 16 The Energy Act 2004 is amended as follows.

#### Commencement Information

**I72** Sch. 5 para. 16 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

VALID FROM 06/04/2009

- 17 Omit section 105(9) (power to require provision of information in connection with decommissioning programme).

VALID FROM 06/04/2009

- 18 Omit section 107(5) to (7) (power to require provision of information in connection with decommissioning programme).

- 19 In section 132 (interpretation of Chapter 5 of Part 2), in subsection (4), in the definition of “fossil fuel” for “section 32” substitute “ section 32M ”.

#### Commencement Information

**I73** Sch. 5 para. 19 in force at 1.4.2009 by S.I. 2009/45, art. 3(c)(i)

- 20 In section 185 (adjustment of transmission charges), in subsection (14), in the definition of “renewable sources” for “evidence” to the end substitute “ renewables obligation certificates (within the meaning of section 32B of that Act) in respect of electricity generated from those sources is capable of satisfying a renewables obligation imposed by a renewables obligation order (within the meaning of section 32 of that Act); ”.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2008. (See end of Document for details)

**Commencement Information**  
**I74** Sch. 5 para. 20 in force at 1.4.2009 by S.I. 2009/45, art. 3(c)(i)

21 In Schedule 13 (directions given to the Civil Nuclear Police Authority), in paragraph 2(1)(h) for “officers of the Secretary of State’s department” substitute “persons authorised by the Secretary of State”.

**Commencement Information**  
**I75** Sch. 5 para. 21 in force at 26.1.2009 by S.I. 2009/45, art. 2(e)(iv)

SCHEDULE 6

Section 108

REPEALS

**Commencement Information**  
**I76** Sch. 6 in force at 26.1.2009 for specified purposes by S.I. 2009/45, arts. 2(e)(vi), 3(c)(ii), 4(d)(ii)  
**I77** Sch. 6 in force at 1.4.2009 for specified purposes by S.I. 2009/45, art. 3(c)(ii)

Short title and chapter	Extent of repeal
Pipe-lines Act 1962 (c. 58)	In section 66(1)— (a) in the definition of “gas processing operation”, “and” after paragraph (b); (b) in the definition of “terminal”, “and” after paragraph (b).
Gas Act 1986 (c. 44)	Section 4AA(5)(ba). In section 17(9), “with the consent of the Secretary of State”.
Electricity Act 1989 (c. 29)	Section 3A(5)(ba).
Gas Act 1995 (c. 45)	In section 12(6), in the definition of “gas processing operation”, “and” at the end of paragraph (b).
Petroleum Act 1998 (c. 17)	Section 26(2). In section 28(1), in the definition of “gas processing operation”, “and” after paragraph (b). In section 31(1), “(d) or”. In section 34(3), “(d) or”.
Utilities Act 2000 (c. 27)	In section 33(1), “or” at the end of paragraph (b).
Sustainable Energy Act 2003 (c. 30)	In section 1— (a) subsection (1A)(a), (b) and (c), and

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	(b) subsections (1B) and (1C).
Energy Act 2004 (c. 20)	Section 81(3). Section 105(9). Section 107(5) to (7). Section 116. Section 180(2).
Climate Change and Sustainable Energy Act 2006 (c. 19)	In section 5, in subsection (2) “and as if” to the end. Section 18. Section 22(b) and “and” immediately preceding it. Sections 23 and 24.

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**Changes to legislation:**

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