

ENERGY ACT 2008

EXPLANATORY NOTES

Chapter 3: Storage of Carbon Dioxide

Commentary on Sections

Miscellaneous

Section 34: Power of Secretary of State etc to transfer functions

91. This section gives the Secretary of State or (by *subsection (8)*) the Scottish Ministers the power to transfer to another authority (which must be a public body, for example the Marine Fisheries Agency (or the Marine Management Organisation (MMO) once established) any of the functions conferred on them by this Chapter, with the exception of powers to make regulations or orders. Such a transfer may be made to several different authorities, either of different functions or of the same function in respect of different places. For example, one or more authorities may be given the function of granting licences in respect of all the activities covered by the Chapter, or just some of the activities. This allows flexibility in the choice of the regulatory authorities for carbon dioxide storage. Any transfer of functions under this section will be made by order subject to negative resolution procedure (see section 105).
92. *Subsection (4)* ensures that an order transferring functions to another authority may also provide for the financing of that authority's exercise of the transferred functions, and may require fees collected by the Authority to be paid into the Consolidated Fund (or, in the case of fees collected by authorities exercising functions transferred by the Scottish Ministers, the Scottish Consolidated Fund). The order may also modify section 188 of the Energy Act 2004, and regulations made under that section, in order to reflect the fact that certain functions have been transferred to another authority. That section gives the Secretary of State the power to collect charges in respect of the performance of certain energy-related functions, and is amended by *paragraph 13* of Schedule 1 to the Act so as to include functions of the Secretary of State under Chapters 2 and 3 of this Part, and to extend it to functions of the Scottish Ministers under Chapter 3.
93. *Subsections (5) and (6)* give the Secretary of State or (by *subsection (8)*) the Scottish Ministers a power of direction in relation to the exercise of functions by the authority to which they have been transferred. Before that power of direction is exercised, there is an obligation to consult with the authority concerned (*subsection (7)*).