

ENERGY ACT 2008

EXPLANATORY NOTES

Part 6: General

Commentary on Sections

Section 103: Offences by bodies corporate etc

599. This section sets out the attribution of responsibility for offences under the Act by corporate bodies. *Subsection (1)* provides that an officer of a corporate body as well as the corporate body will be guilty of an offence if the officer agreed to, or knew about, the conduct constituting the offence, or if the offence was attributable to the officer's negligence.
600. Where a body corporate is managed by its members (for example, a limited liability partnership), by virtue of *subsection (2)*, *subsection (1)* applies to a member of the body corporate as it applies to an officer of a body corporate, provided the act or default in question was connected with the member's functions of management.
601. *Subsection (3)* provides for a partner in a firm, as well as the firm, to be liable for an offence, if the offence is committed by a Scottish firm.

Section 104 : Subordinate legislation

602. This section provides for the Secretary of State or Scottish Ministers to make Orders in Council, orders or regulations under the Act by statutory instrument.
603. The statutory instrument may include incidental, supplementary and consequential provision and make transitory or transitional provision and savings.
604. These powers permit the Secretary of State to modify Acts of Parliament, or Scottish Ministers to modify Acts of the Scottish Parliament but where the Secretary of State or Scottish Ministers do so the resulting instrument is always subject to affirmative resolution procedure.

Section 105: Parliamentary control of subordinate legislation

605. This section provides for the procedures for Orders in Council, orders and regulations made under this Act.

Section 107 and Schedule 5: Minor and consequential amendments

606. This section introduces Schedule 5, which contains minor and consequential amendments, described in the Explanatory Notes under the Parts to which they pertain. It also confers on the Secretary of State powers to make any further amendments to Acts of Parliament, Acts of the Scottish Parliament or other instruments by order. These orders are subject to negative resolution procedure, unless they modify an Act or an Act of the Scottish Parliament in which case they are subject to affirmative resolution procedure (see section 106). The section also empowers Scottish Ministers to make

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

amendments to Acts of Parliament, Acts of the Scottish Parliament or other instruments in consequence of Chapter 3 of Part 1 as that Chapter applies in relation to the territorial sea adjacent to Scotland or in relation to functions of the Scottish Minister. Instruments which amend Acts of Parliament or Acts of the Scottish Parliament are subject to approval of the Scottish Parliament.

Section 109: Transitional provision etc

607. This section gives the Secretary of State or Scottish Ministers the power, by order, to make transitional or savings provisions which may appear appropriate as a consequence of the Act's passage. These may include amendments to primary legislation which, by virtue of section 94, would be subject to the affirmative resolution procedure.
608. The section also empowers Scottish Ministers to make for transitional provisions in consequence of Chapter 3 of Part 1 as that Chapter applies in relation to the territorial sea adjacent to Scotland or in relation to functions of the Scottish Ministers. This can include amendments to Acts of Parliament or Acts of the Scottish Parliament subject to approval of the Scottish Parliament.

Section 110: Commencement

609. *Subsection (1)* lists the provisions of the Act which came into force immediately the Act was passed (i.e. 26 November 2008).
610. This section provides for the Secretary of State to commence the remaining provisions of the Act by order, which by *subsection (6)* may include consequential and transitional provisions as well as making different provision for different cases.

Section 112: Extent

611. This clause sets out the extent of the various provisions of the Act.