



# Energy Act 2013

## 2013 CHAPTER 32

### PART 1

#### DECARBONISATION

##### **1 Decarbonisation target range**

- (1) It is the duty of the Secretary of State to ensure, in respect of each year in relation to which a decarbonisation target range is set, that the carbon intensity of electricity generation in the United Kingdom is no greater than the maximum permitted level of the decarbonisation target range.
- (2) The Secretary of State may by order (“a decarbonisation order”) set or amend a decarbonisation target range in relation to a year.
- (3) A “decarbonisation target range”, in relation to any year, means a range for the carbon intensity of electricity generation in the United Kingdom.
- (4) Section 4 makes further provision in relation to subsection (3).
- (5) The earliest year in relation to which a decarbonisation target range may be set is 2030; and the first decarbonisation order may not be made before the date on which the carbon budget for the budgetary period which includes the year 2030 is set by virtue of the duty of the Secretary of State under section 4(2)(b) of the Climate Change Act 2008.
- (6) A decarbonisation order may amend a decarbonisation target range only if it appears to the Secretary of State that significant changes affecting the basis on which the decarbonisation target range was set (or previously amended) make it appropriate to do so.
- (7) The Secretary of State may not revoke a decarbonisation order unless, in respect of each year in relation to which the order sets a decarbonisation target range, a decarbonisation target range remains in effect.
- (8) A decarbonisation order may—

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- (a) amend section 23(4) of the Climate Change Act 2008 (alteration of budgetary periods) so that after “Act” there is inserted “or sections 1 to 4 of the Energy Act 2013”;
  - (b) repeal section 5 of the Energy Act 2010 (reports on decarbonisation and CCS progress).
- (9) Provision made by virtue of subsection (8) may also—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings.
- (10) A decarbonisation order is to be made by statutory instrument and a statutory instrument containing a decarbonisation order may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) Before laying before Parliament a draft of a statutory instrument containing a decarbonisation order the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

## **2 Matters to be taken into account**

- (1) The following matters must be taken into account by the Secretary of State in setting or amending a decarbonisation target range.
- (2) The matters are—
- (a) scientific knowledge about climate change;
  - (b) technology relevant to the generation and storage of electricity and to the demand for and use of electricity;
  - (c) economic circumstances, and in particular the likely impact on the economy and the competitiveness of particular sectors of the economy;
  - (d) fiscal circumstances, and in particular the likely impact on taxation, public spending and public borrowing;
  - (e) social circumstances, and in particular the likely impact on fuel poverty;
  - (f) the structure of the energy market in the United Kingdom;
  - (g) differences in circumstances between England, Wales, Scotland and Northern Ireland;
  - (h) circumstances at European and international level;
  - (i) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets).

## **3 Further duties of the Secretary of State**

- (1) As soon as is reasonably practicable after a decarbonisation order is made, the Secretary of State must lay before Parliament a report setting out proposals and policies for fulfilling the duty in section 1(1).
- (2) Before laying the report under subsection (1), the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers; and the Secretary of State must send a copy of the report to them.
- (3) The Secretary of State must in respect of each year—

- (a) beginning with the year after the first year in which a decarbonisation order is made, and
- (b) ending with the final year in relation to which a decarbonisation target range is set,

lay before Parliament a statement of the carbon intensity of electricity generation in the United Kingdom in relation to that year.

- (4) Section 4 makes further provision in relation to subsection (3).
- (5) The statement must include—
  - (a) a summary of the means by which the carbon intensity was calculated;
  - (b) in any statement after the first, a declaration of whether the carbon intensity has decreased or increased since the previous statement.
- (6) In respect of any year in relation to which a decarbonisation target range is set, the statement must also include—
  - (a) a declaration that the carbon intensity in relation to that year was no greater than the maximum permitted level of the decarbonisation target range, or
  - (b) the reasons why the carbon intensity in relation to that year was greater than the maximum permitted level of the decarbonisation target range.
- (7) The statement required by subsection (3) must be laid before Parliament not later than the 31st March in the second year following the year in respect of which the carbon intensity is being stated.
- (8) The Secretary of State must send a copy of the statement required by subsection (3) to the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

#### **4 Meaning and calculation of “carbon intensity of electricity generation in the United Kingdom”**

- (1) In sections 1 and 3, “carbon intensity of electricity generation in the United Kingdom” means grams of carbon dioxide equivalent emissions, measured per kilowatt hour of electricity generated in the United Kingdom (calculated consistently with international carbon reporting practice).
- (2) For the purposes of subsection (1)—
  - (a) “carbon dioxide equivalent” means a gram of carbon dioxide or an amount of any other greenhouse gas with an equivalent global warming potential (calculated consistently with international carbon reporting practice);
  - (b) “the United Kingdom” includes—
    - (i) the territorial sea adjacent to the United Kingdom, and
    - (ii) any area for the time being designated by an Order in Council under section 84(4) of the Energy Act 2004 (a “Renewable Energy Zone” for the purposes of that Act).
- (3) In this section—
  - (a) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008;
  - (b) “international carbon reporting practice” has the meaning given by section 94(1) of that Act.

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- (4) But the Secretary of State may by order make further provision about—
- (a) the meaning of “carbon intensity of electricity generation in the United Kingdom” (including, in particular, the meaning of “the United Kingdom”);
  - (b) the means by which the carbon intensity is to be calculated;
  - (c) the meaning of “in relation to any year”;
- and subsections (1) to (3) are subject to provision made by any such order.
- (5) An order under this section is to be made by statutory instrument and a statutory instrument containing such an order may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (6) An order under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Before laying before Parliament a draft of a statutory instrument containing an order under this section the Secretary of State must consult the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

## PART 2

### ELECTRICITY MARKET REFORM

#### CHAPTER 1

##### GENERAL CONSIDERATIONS

### 5 **General considerations relating to this Part**

- (1) In exercising the function of making—
- (a) regulations under section 6;
  - (b) an order under section 23;
  - (c) a modification under section 26;
  - (d) regulations under section 27;
  - (e) a modification under section 37;
  - (f) a modification under section 45;
  - (g) an order under section 46;
- the Secretary of State must have regard to the matters mentioned in subsection (2).
- (2) The matters are—
- (a) the duties of the Secretary of State under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the duty of the Secretary of State under section 1(1) of this Act (decarbonisation target range);
  - (c) ensuring the security of supply to consumers of electricity;

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- (d) the likely cost to consumers of electricity;
  - (e) the target set out in Article 3(1) of, and Annex 1 to, the renewables directive (use of energy from renewable sources).
- (3) In subsection (2)(e) “the renewables directive” means Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources.
- (4) The Secretary of State must before 31st December in each year, beginning with 2014, prepare and lay before Parliament a report setting out how the Secretary of State has carried out during the year the functions under this Part of this Act.
- (5) The Secretary of State must publish the report and send a copy of it to the Department of Enterprise, Trade and Investment, the Scottish Ministers and the Welsh Ministers.

## CHAPTER 2

### CONTRACTS FOR DIFFERENCE

#### 6 Regulations to encourage low carbon electricity generation

- (1) The Secretary of State may for the purpose of encouraging low carbon electricity generation make regulations about contracts for difference between a CFD counterparty and an eligible generator.
- (2) A contract for difference is a contract—
- (a) certain payments under which are to be funded by electricity suppliers (see further section 9), and
  - (b) which a CFD counterparty is required to enter into by virtue of section 10 or 14;
- and such a contract is referred to in this Chapter as a “CFD”.
- (3) For the purposes of this Chapter—
- “CFD counterparty” is to be construed in accordance with section 7(2);
  - “eligible generator” is to be construed in accordance with section 10(3);
  - “low carbon electricity generation” means electricity generation which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;
  - “regulations” means regulations under this section.
- (4) In subsection (3) “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (5) The provision which may be made by regulations includes, but is not limited to, the provision described in this Chapter.
- (6) Regulations may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.

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- (7) Regulations are to be made by statutory instrument.
- (8) An instrument containing regulations of any of the following kinds may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament (in each case, whether or not the regulations also make other provision)—
  - (a) the first regulations which make provision falling within each of the following—
    - (i) section 14;
    - (ii) section 15;
    - (iii) section 19;
    - (iv) section 20;
  - (b) regulations which make provision falling within—
    - (i) section 9;
    - (ii) section 10;
    - (iii) section 12;
    - (iv) section 13;
    - (v) section 17;
    - (vi) section 18;
    - (vii) section 21;
    - (viii) section 22;
    - (ix) section 23.
- (9) Any other instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) If, but for this subsection, an instrument containing regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

## **7 Designation of a CFD counterparty**

- (1) The Secretary of State may by order made by statutory instrument designate an eligible person to be a counterparty for contracts for difference.
- (2) A person designated under this section is referred to in this Chapter as a “CFD counterparty”.
- (3) A person is eligible if the person is—
  - (a) a company formed and registered under the Companies Act 2006, or
  - (b) a public authority, including any person any of whose functions are of a public nature.
- (4) A designation may be made only with the consent of the person designated.
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under this section, but only if the Secretary of State considers it necessary for the purposes of ensuring that—
  - (a) liabilities under a CFD are met,
  - (b) arrangements entered into for purposes connected to a CFD continue to operate, or

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- (c) directions given to a CFD counterparty continue to have effect.
- (6) A designation ceases to have effect if—
  - (a) the Secretary of State by order made by statutory instrument revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (7) At any time after the first designation has effect, the Secretary of State must, so far as reasonably practicable, exercise the power to designate so as to ensure that at least one designation has effect under this section.
- (8) Schedule 1 (which makes provision about schemes to transfer property, rights and liabilities from a person who has ceased to be a CFD counterparty to a person who is a CFD counterparty) has effect.
- (9) As soon as reasonably practicable after a designation ceases to have effect the Secretary of State must make a transfer scheme under Schedule 1 to ensure the transfer of all rights and liabilities under any CFD to which the person who has ceased to be a CFD counterparty was a party.
- (10) Regulations may include provision about the period of time for which, and the circumstances in which, a person who has ceased to be a CFD counterparty is to continue to be treated as a CFD counterparty for the purposes of the regulations.

## **8 Duties of a CFD counterparty**

- (1) A CFD counterparty must act in accordance with—
  - (a) any direction given by the Secretary of State by virtue of this Chapter;
  - (b) any provision included in regulations.
- (2) A CFD counterparty must exercise the functions conferred by or by virtue of this Chapter to ensure that it can meet its liabilities under any CFD to which it is a party.
- (3) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

## **9 Supplier obligation**

- (1) Regulations must make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty to make payments under CFDs.
- (2) Regulations may make provision for electricity suppliers to pay a CFD counterparty for the purpose of enabling the counterparty—
  - (a) to meet such other descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier.
- (3) In subsection (2)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.

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- (4) Regulations may make provision to require electricity suppliers to provide financial collateral to a CFD counterparty (whether in cash, securities or any other form).
- (5) Regulations which make provision by virtue of subsection (1) for the payment of sums by electricity suppliers must impose on the CFD counterparty a duty in relation to the collection of such sums.
- (6) Provision made by virtue of this section may include provision for—
- (a) a CFD counterparty to determine the form and terms of any financial collateral;
  - (b) a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or are to be provided as financial collateral by an electricity supplier;
  - (c) the issuing of notices by a CFD counterparty to require the payment or provision of such amounts;
  - (d) the enforcement of obligations arising under such notices.
- (7) Provision made by virtue of subsection (6)(b) may provide for anything which is to be calculated or determined under the regulations 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 regulations.
- (8) Provision made by virtue of subsection (6)(d) may include provision—
- (a) about costs;
  - (b) about interest on late payments under notices;
  - (c) about references to arbitration;
  - (d) about appeals.
- (9) Any sum which—
- (a) an electricity supplier is required by virtue of regulations to pay to a CFD counterparty, and
  - (b) has not been paid by the date on which it is required by virtue of regulations to be paid,
- may be recovered from the electricity supplier by the CFD counterparty as a civil debt due to it.
- (10) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
- (a) section 6(1)(d) of EA 1989, or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## **10 Direction to offer to contract**

- (1) The Secretary of State may, in accordance with provision made by regulations, direct a CFD counterparty to offer to contract with a person specified in the direction, on terms specified in the direction.
- (2) A person may be specified in a direction under subsection (1) only if that person is an eligible generator.



- (3) Regulations must make provision defining who is an “eligible generator” for the purposes of this Chapter.
- (4) Regulations may make further provision about a direction under this section and in particular about—
  - (a) the circumstances in which a direction may or must be given;
  - (b) the terms which may or must be specified in a direction.
- (5) Provision falling within subsection (4) may include provision for—
  - (a) the determination of a matter on a competitive basis,
  - (b) calculations or determinations to be made under the regulations, including 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 regulations.
- (6) A direction may not be given under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the direction.
- (7) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (6) is not required.
- (8) In subsection (6) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

## **11 Standard terms**

- (1) The Secretary of State may issue standard terms and conditions of CFDs (“standard terms”).
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in regulations.
- (4) In issuing or revising standard terms the Secretary of State must have regard to the matters mentioned in section 5(2).
- (5) The Secretary of State must publish standard terms as issued or revised under this section.
- (6) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under section 15.
- (7) Different standard terms may be issued for different categories of CFD.

## **12 CFD notifications**

- (1) The national system operator may, in accordance with provision made by regulations, give a notification to a CFD counterparty (a “CFD notification”) specifying—
  - (a) an eligible generator, and
  - (b) such other information as may be required for the purpose of making an offer under section 14 to contract with that generator.

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- (2) A CFD notification must not be given if regulations made by virtue of section 23 prevent the giving of the notification.
- (3) Regulations may make further provision about CFD notifications and in particular provision about—
  - (a) the circumstances in which a CFD notification may or must be given;
  - (b) the kinds of information mentioned in subsection (1)(b) that must be specified in a CFD notification;
  - (c) appeals against decisions not to give CFD notifications.
- (4) A CFD notification may not be given by virtue of regulations under this section in relation to an electricity generating station in Northern Ireland unless the Department of Enterprise, Trade and Investment consent to the CFD notification.
- (5) But regulations may, with the consent of that Department, include provision for circumstances in which consent under subsection (4) is not required.
- (6) In subsection (4) “Northern Ireland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

### 13 Allocation of CFDs

- (1) Provision that may be included in regulations by virtue of section 12 includes in particular provision about how CFDs are to be allocated to eligible generators (and for this purpose a CFD is “allocated” to a generator if the generator is specified in a CFD notification).
- (2) Provision made by virtue of subsection (1) may include provision—
  - (a) conferring power on the Secretary of State to make rules (an “allocation framework”) about how CFDs are to be allocated;
  - (b) for different periods within which CFDs are to be allocated (“allocation rounds”);
  - (c) for different allocation frameworks to apply in respect of different allocation rounds;
  - (d) for the publication of allocation frameworks;
  - (e) about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by regulations by virtue of subsection (2) may impose requirements on the Secretary of State, including in particular—
  - (a) requirements as to the giving of notice before an allocation round is commenced;
  - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by reference to which a limit on the CFDs allocated during the round is to be determined).
- (4) An allocation framework may—
  - (a) confer functions on the national system operator with respect to the allocation of CFDs;

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- (b) specify targets to be met or taken into account by the national system operator in giving CFD notifications by virtue of section 12, including targets relating to—
    - (i) the means by which electricity is generated;
    - (ii) the generating capacity of electricity generating stations;
    - (iii) the geographical location of electricity generating stations;
  - (c) make any provision that may be made by regulations by virtue of subsection (3).
- (5) An allocation framework may include provision for—
- (a) the determination of a matter on a competitive basis;
  - (b) calculations or determinations to be made under the framework, including 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 framework.
- (6) An allocation framework may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of subsection (2) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections (4) to (7) are subject to any provision contained in regulations.

#### **14 CFD notification: offer to contract on standard terms**

- (1) Where a CFD notification is given to a CFD counterparty under section 12, the CFD counterparty must, in accordance with provision made by regulations, offer to contract with the eligible generator specified in the notification on—
- (a) standard terms, or
  - (b) standard terms as modified in accordance with any modification agreement entered into between the CFD counterparty and the eligible generator for the purposes of the CFD notification (see section 15).
- (2) Regulations may make further provision about an offer to contract made under this section, including provision about—
- (a) how a CFD counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in a CFD notification;
  - (b) the time within which the offer must be made;
  - (c) how the eligible generator to whom it is made may enter into a CFD as a result of the offer;
  - (d) what is to happen if the eligible generator does not enter into a CFD as a result of it.
- (3) In this section, “standard terms”, in relation to a CFD notification, means standard terms published under section 11, determined in accordance with regulations as the standard terms that are to apply in relation to the CFD notification.

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## **15 Modification of standard terms**

- (1) This section applies where a person wishes to be specified as an eligible generator in a CFD notification (“the potential CFD notification”).
- (2) A CFD counterparty and the person may, in accordance with provision made by regulations, agree to modify standard terms for the purposes of any offer that would be required under section 14 if the potential CFD notification is given (a “modification agreement”).
- (3) A CFD counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
  - (a) the CFD counterparty is satisfied that—
    - (i) the effect of the modification is minor, and
    - (ii) the modification is necessary; and
  - (b) the standard term has not been designated under section 11 as a term that may not be modified under this section.
- (4) Regulations may make further provision about modification agreements, including—
  - (a) the circumstances in which a person may make an application for a modification agreement;
  - (b) the time by which an application must be made;
  - (c) the procedure to be followed, and the information to be given, by the person in making an application;
  - (d) how a CFD counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
  - (e) the time by which determinations must be made;
  - (f) the form of modification agreements.
- (5) Provision made by virtue of subsection (4)(d) may include provision under which the CFD counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

## **16 Sections 12 to 15: further provision**

Provision made by regulations by virtue of any of sections 12 to 15 may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including 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 regulations.

## **17 Payments to electricity suppliers**

- (1) Regulations may make provision about the amounts which must be paid by a CFD counterparty to electricity suppliers.
- (2) Provision made by virtue of this section may—

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- (a) include provision for a CFD counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by the CFD counterparty;
  - (b) provide for anything which is to be calculated or determined under the regulations 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 regulations.
- (3) In this section “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
- (a) section 6(1)(d) of EA 1989; or
  - (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)).

## **18 Application of sums held by a CFD counterparty**

- (1) Regulations may make provision for apportioning sums—
- (a) received by a CFD counterparty from electricity suppliers under provision made by virtue of section 9;
  - (b) received by a CFD counterparty under a CFD,
- in circumstances where the CFD counterparty is unable fully to meet its liabilities under a CFD.
- (2) Provision made by virtue of subsection (1) may include provision about the meaning of “unable fully to meet its liabilities under a CFD”.
- (3) In making provision by virtue of subsection (1) the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts which are owed.
- (4) Regulations may make provision about the application of sums held by a CFD counterparty.
- (5) Provision made by virtue of subsection (4) may include provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

## **19 Information and advice**

- (1) Regulations may make provision about the provision and publication of information.
- (2) Provision made by virtue of subsection (1) may include provision—
- (a) for the Secretary of State to require the national system operator to provide advice to the Secretary of State;
  - (b) for the Secretary of State to require a CFD counterparty, the Authority, the Northern Ireland Authority for Utility Regulation or the Northern Ireland system operator to provide advice to the Secretary of State or any other person specified in the regulations;
  - (c) for the Secretary of State to require a CFD counterparty, the national system operator, the Authority, the Northern Ireland Authority for Utility Regulation, the Northern Ireland system operator or a generator who is party to a CFD to provide information to the Secretary of State or any other person specified in the regulations;

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- (d) for the national system operator to require information to be provided to it by a CFD counterparty, a generator who is party to a CFD or the Northern Ireland system operator;
- (e) for a CFD counterparty to require information to be provided to it by electricity suppliers or the Northern Ireland system operator;
- (f) for the classification and protection of confidential or sensitive information;
- (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f).

(3) In subsection (2)—

- (a) “Northern Ireland system operator” means the holder of a licence under Article 10(1)(b) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1));
- (b) “electricity supplier”, subject to any provision made by regulations, means a person who is a holder of a licence to supply electricity under—
  - (i) section 6(1)(d) of EA 1989; or
  - (ii) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)).

(4) The prohibition on disclosure of information by—

- (a) section 105(1) of the Utilities Act 2000;
- (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));

does not apply to a disclosure required by virtue of this section.

## 20 Functions of the Authority

Regulations may make provision conferring functions on the Authority for the purpose of offering advice to, or making determinations on behalf of, a party to a CFD.

## 21 Regulations: further provision

(1) Regulations may make provision—

- (a) to require a CFD counterparty to enter into arrangements or to offer to contract for purposes connected to a CFD;
- (b) specifying things that a CFD counterparty may or must do, or things that a CFD counterparty may not do;
- (c) conferring on the Secretary of State further powers to direct a CFD counterparty to do, or not to do, things specified in the regulations or the direction.

(2) Provision made by virtue of subsection (1)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—

- (a) the determination of an application for a modification agreement under section 15;
- (b) the enforcement of obligations under a CFD;
- (c) a variation or termination of a CFD;
- (d) the settlement or compromise of a claim under a CFD;
- (e) the conduct of legal proceedings relating to a CFD;
- (f) the exercise of rights under a CFD.

- (3) Regulations must include such provision as the Secretary of State considers necessary to ensure that a CFD counterparty can meet its liabilities under any CFD to which it is a party.

## **22 Enforcement**

- (1) Regulations may make provision for requirements under the regulations to be enforceable—
- (a) by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (b) by the Northern Ireland Authority for Utility Regulations as if they were relevant requirements on a regulated person for the purposes of Article 41A of the [Energy \(Northern Ireland\) Order 2003 \(S.I. 2003/419 \(N.I. 6\)\)](#).
- (2) Provision made by virtue of subsection (1)(a) may include provision about the enforcement of requirements imposed on the national system operator.
- (3) Provision made by virtue of subsection (1)(b) may be made in relation only to the enforcement of requirements imposed on the holder of a licence under Article 10(1) (c) of the [Electricity \(Northern Ireland\) Order 1992 \(S.I. 1992/231 \(N.I. 1\)\)](#).

## **23 Limits on costs to be incurred**

- (1) Regulations may make provision for—
- (a) the power to give a notification under section 12 not to be exercisable if a maximum cost incurred or to be incurred by a CFD counterparty has been reached (such cost to be calculated in accordance with provision made by or under the regulations);
  - (b) a power for the Secretary of State to direct the national system operator not to give a notification under that section if the Secretary of State believes that by virtue of the notification being given a cost greater than the maximum cost provided for by the regulations would be incurred.
- (2) If more than one designation has effect under section 7, the reference in subsection (1) (a) is a reference to all CFD counterparties.
- (3) Provision made by virtue of subsection (1)(a) may provide for anything which is to be calculated under the regulations to be calculated 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 regulations.

## **24 Consultation**

- (1) Before making regulations under this Chapter the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the Department of Enterprise, Trade and Investment,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989,



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- (e) any person who is a holder of a licence under Article 10(1)(b) or (c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (transmission or supply licence),
  - (f) the Authority,
  - (g) the national system operator, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (2) Before publishing standard terms under section 11 the Secretary of State must consult such persons as the Secretary of State considers it appropriate to consult.
- (3) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

## 25 Shadow directors, etc.

Neither the Secretary of State nor the national system operator is, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—

- (a) a person occupying in relation to a CFD counterparty the position of director;
- (b) being a person in accordance with whose directions or instructions the directors of a CFD counterparty are accustomed to act;
- (c) exercising any function of management in a CFD counterparty;
- (d) a principal of a CFD counterparty.

## 26 Licence modifications

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a), (b) or (c) of EA 1989 (generation, transmission and distribution licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A(1A) of that Act;
  - (c) a document maintained in accordance with the conditions of licences under that provision, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of—
- (a) conferring functions on the national system operator in connection with its functions by or by virtue of this Chapter;
  - (b) allowing or requiring services to be provided to a CFD counterparty;
  - (c) enforcing obligations under a CFD.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the power under subsection (1) may in particular include provision of a kind that may be included in regulations.
- (4) Before making a modification under this section, the Secretary of State must consult—
- (a) the Scottish Ministers,
  - (b) the Welsh Ministers,
  - (c) the holder of any licence being modified,
  - (d) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989,



- (e) any person who is a holder of a licence to supply electricity under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)),
  - (f) the Department of Enterprise, Trade and Investment,
  - (g) the Authority, and
  - (h) such other persons as the Secretary of State considers it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

### CHAPTER 3

#### CAPACITY MARKET

#### 27 Power to make electricity capacity regulations

- (1) The Secretary of State may by regulations make provision for the purpose of providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (2) Regulations under this section are referred to in this Chapter as “electricity capacity regulations”.
- (3) In subsection (1) “providing capacity” means providing electricity or reducing demand for electricity; and electricity capacity regulations may make further provision about the meaning of “providing electricity” or “reducing demand for electricity”.
- (4) The provision which may be made about the meaning of “reducing demand for electricity” includes provision that reducing the consumption of electricity reduces demand for electricity.
- (5) The provision that may be made in electricity capacity regulations includes, but is not limited to, the provision described in this Chapter.
- (6) In this Chapter “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### 28 Capacity agreements

- (1) Electricity capacity regulations may make provision about capacity agreements.
- (2) Subject to any further provision made under this Chapter, a capacity agreement is an instrument by virtue of which—
  - (a) the holder of the capacity agreement (“the capacity provider”) may be required to provide capacity;
  - (b) all electricity suppliers may be required to make payments (“capacity payments”) for the benefit of capacity providers;
  - (c) capacity providers may be required to make payments (“capacity incentives”) for the benefit of all electricity suppliers.
- (3) Provision included in electricity capacity regulations for the purposes of subsection (2) may make provision about the meaning of “electricity supplier”.

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- (4) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision about—
- (a) the terms of a capacity agreement;
  - (b) the circumstances in which, and the process by which, a capacity agreement may or must be issued;
  - (c) the persons who may be capacity providers;
  - (d) the circumstances in which capacity must be available;
  - (e) the duration of a capacity agreement;
  - (f) the means by which capacity payments or capacity incentives are to be calculated;
  - (g) a person or body who is to administer the settlement of capacity payments or capacity incentives (“a settlement body”);
  - (h) the enforcement of the terms of a capacity agreement;
  - (i) the resolution of disputes relating to a capacity agreement;
  - (j) the circumstances in which a capacity agreement may be terminated or varied;
  - (k) the circumstances in which a capacity agreement may be assigned or traded.
- (5) Provision falling within subsection (4) includes provision—
- (a) conferring on the national system operator the function of issuing capacity agreements;
  - (b) relating to the outcome of a capacity auction (see section 29);
  - (c) about any conditions that must be satisfied by or in relation to a person before that person may enter a capacity auction or become a capacity provider;
  - (d) about any matters in relation to which a person must satisfy the national system operator before the person may enter a capacity auction or become a capacity provider.
- (6) Provision made by virtue of subsection (4)(f) and (g) may—
- (a) include provision for a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed as capacity payments or capacity incentives;
  - (b) provide for anything which is to be calculated or determined under the regulations 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 regulations.
- (7) Provision made by virtue of this section may include provision requiring a person to consent to the inspection of plant or premises, either before or after that person becomes a capacity provider.

## **29 Capacity auctions**

- (1) Electricity capacity regulations may make provision for the determination on a competitive basis of who may be a capacity provider (referred to in this Chapter as a “capacity auction”).
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
  - (a) for the national system operator to run a capacity auction;

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- (b) about the circumstances in which a capacity auction may or must be held;
  - (c) about the amount of capacity in relation to which a determination may be made;
  - (d) about the intervals at which a capacity auction may or must be held;
  - (e) about the process by which a capacity auction may or must be run;
  - (f) about the manner in which the Secretary of State may decide whether and how to exercise any function in relation to capacity auctions;
  - (g) about appeals relating to eligibility for, or the outcome of, capacity auctions.
- (3) Provision falling within subsection (2)(a) may include provision—
- (a) requiring the national system operator to prepare and publish rules or guidance about capacity auctions;
  - (b) about any process to be followed in preparing and publishing any such rules or guidance.
- (4) Provision falling within subsection (2)(c) may confer on the Secretary of State or the Authority (but not on any other person) the function of deciding the amount of capacity in relation to which a determination may be made.
- (5) Provision falling within subsection (2)(f) may include provision about—
- (a) the frequency with which a decision will be made and reviewed;
  - (b) the persons who will be consulted before a decision is made;
  - (c) the matters to be taken into account in reaching a decision.

### **30 Settlement body**

- (1) Electricity capacity regulations may make provision for payments to be made by electricity suppliers or capacity providers to a settlement body (see section 28(4)(g)) for the purpose of enabling the body—
- (a) to meet such descriptions of its costs as the Secretary of State considers appropriate;
  - (b) to hold sums in reserve;
  - (c) to cover losses in the case of insolvency or default of an electricity supplier or capacity provider.
- (2) In subsection (1)(a) “costs” means costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (3) Electricity capacity regulations may make provision to require electricity suppliers or capacity providers to provide financial collateral to a settlement body (whether in cash, securities or any other form).
- (4) Provision made by virtue of this section may include provision for—
- (a) a settlement body to determine the form and terms of any financial collateral;
  - (b) a settlement body to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by an electricity supplier or capacity provider or are to be provided as financial collateral by an electricity supplier or capacity provider;
  - (c) the issuing of notices by a settlement body to require the payment or provision of such amounts.

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- (5) Provision made by virtue of subsection (4)(b) may provide for anything which is to be calculated or determined under the regulations 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 regulations.

### **31 Functions of the Authority or the national system operator**

Electricity capacity regulations may make provision to confer functions on the Authority or the national system operator.

### **32 Other requirements**

- (1) Electricity capacity regulations may impose requirements otherwise than under a capacity agreement.
- (2) The persons on whom requirements may be imposed by virtue of subsection (1) include—
- (a) any person who is a holder of a licence under section 6(1) of EA 1989;
  - (b) any other person carrying out functions in relation to capacity agreements;
  - (c) any other person who is, or has ceased to be, a capacity provider.
- (3) Requirements which may be imposed by virtue of subsection (1) include requirements—
- (a) relating to the manner in which functions are to be exercised;
  - (b) relating to restrictions on the use of generating plant;
  - (c) relating to participation in a capacity auction;
  - (d) relating to the inspection of plant or property.

### **33 Electricity capacity regulations: information and advice**

- (1) Electricity capacity regulations may make provision about the provision and publication of information.
- (2) Provision included in electricity capacity regulations by virtue of subsection (1) may include provision—
- (a) for the Secretary of State to require the Authority, the national system operator or any other person specified in the regulations to provide information or advice to the Secretary of State or any other person so specified;
  - (b) for the Authority or the national system operator to require information to be provided to it by any person specified in the regulations for any purpose so specified;
  - (c) for the Secretary of State to require capacity providers and electricity suppliers to share information about the operation of capacity agreements with each other or with any other person so specified;
  - (d) for the publication by any person so specified of any information or advice so specified;
  - (e) for the classification and protection of confidential or sensitive information.
- (3) The prohibition on disclosure of information by section 105(1) of the Utilities Act 2000 does not apply to a disclosure required by virtue of this section.

### **34 Power to make capacity market rules**

- (1) The Secretary of State may make capacity market rules which, subject to subsection (2), may contain any provision that may be made by electricity capacity regulations.
- (2) Capacity market rules may not make—
  - (a) provision falling within—
    - (i) section 27(3);
    - (ii) section 28(3);
    - (iii) paragraphs (f) or (g) of section 28(4);
    - (iv) section 28(5)(a);
    - (v) paragraphs (b), (c), (d) or (f) of section 29(2);
    - (vi) section 30;
    - (vii) section 35;
  - (b) provision for the Secretary of State to require a person to provide information or advice to the Secretary of State.
- (3) Electricity capacity regulations may make provision to confer on the Authority, to such extent and subject to such conditions as may be specified in the regulations, the power to make capacity market rules.
- (4) The conditions may in particular include conditions about consultation; and provision made by virtue of subsection (3) must provide that, before any exercise of the power to make capacity market rules, the Authority must consult—
  - (a) any person who is a holder of a licence to supply electricity under section 6(1)(d) of EA 1989;
  - (b) any person who is a capacity provider.
- (5) Provision made by virtue of subsection (3) must secure that capacity market rules made by the Authority may not confer functions on the Authority except with the consent of the Secretary of State.
- (6) Provision made by virtue of subsection (3) may include provision—
  - (a) for the reference to the Secretary of State in section 33(2)(c) to have effect, for the purposes of capacity market rules and to such extent as may be specified in the regulations, as a reference to the Authority;
  - (b) for section 33(3) to apply in relation to a disclosure required by virtue of the capacity market rules.

### **35 Provision about electricity demand reduction**

- (1) This section applies where provision made by electricity capacity regulations relates to the provision of capacity by reducing demand for electricity.
- (2) Where this section applies, the Secretary of State may, instead of conferring functions on the national system operator, confer functions on such other person or body as the Secretary of State considers appropriate.
- (3) For the purposes of provision made by virtue of subsection (2), the references to the national system operator in—
  - (a) section 28(5)(a) and (d);
  - (b) section 29(2)(a) and (3)(a);

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- (c) section 31;
- (d) section 33(2)(a) and (b);
- (e) section 37,

are to be read as if they included a reference to a person or body on whom a function is conferred by virtue of this section.

### **36 Enforcement and dispute resolution**

- (1) Electricity capacity regulations may make provision about the enforcement of any obligation or requirement imposed by the regulations or by capacity market rules.
- (2) Capacity market rules may make provision about the enforcement of any obligation or requirement imposed by the rules.
- (3) Provision in electricity capacity regulations or in capacity market rules about enforcement or the resolution of disputes may include provision conferring functions on any public body or any other person.
- (4) Provision made by virtue of this section may include provision—
  - (a) about powers to impose financial penalties;
  - (b) for requirements under the electricity capacity regulations or under capacity market rules to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (c) about reference to arbitration;
  - (d) about appeals.

### **37 Licence modifications for the purpose of the capacity market**

- (1) The Secretary of State may, for any purpose related to provision that is made by this Chapter, or any purpose for which provision may be made under this Chapter, modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector 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 those provisions, or an agreement that gives effect to a document so maintained.
- (2) A modification under this section may in particular include a modification—
  - (a) to provide for a new document to be prepared and maintained in accordance with the conditions of a licence;
  - (b) to provide for an agreement to give effect to a document so maintained;
  - (c) to confer functions on the national system operator.
- (3) Provision included in a licence, or in a document or agreement relating to licences, by virtue of the modification power may in particular include provision of any kind that may be included in electricity capacity regulations.
- (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 it appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

### **38 Amendment of enactments**

The Secretary of State may by regulations, for the purpose of or in connection with any provision made by or by virtue of this Chapter—

- (a) amend or repeal section 47ZA of EA 1989 (annual report by Authority on security of electricity supply);
- (b) amend section 172 of the Energy Act 2004 (annual report on security of energy supplies);
- (c) amend section 25 of and Schedule 6A to EA 1989 (enforcement of obligations of regulated persons);
- (d) make such provision amending, repealing or revoking any other enactment as the Secretary of State considers appropriate in consequence of provision made by or by virtue of this Chapter.

### **39 Principal objective and general duties**

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Authority conferred by or by virtue of this Chapter as they apply in relation to functions under Part 1 of that Act.

### **40 Regulations under Chapter 3**

- (1) Regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) Before making any regulations under this Chapter, the Secretary of State must consult—
  - (a) the Authority,
  - (b) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989,
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (4) Regulations under this Chapter must be made by statutory instrument.
- (5) Subject to subsection (6), an instrument containing (whether alone or with other provision) regulations under this Chapter may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

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- (6) An instrument containing only regulations within subsection (7) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) The regulations within this subsection are—
  - (a) electricity capacity regulations which—
    - (i) only make provision within section 33, and
    - (ii) are not the first set of electricity capacity regulations to make such provision;
  - (b) regulations under section 38 which do not make provision amending or repealing a provision of an enactment contained in primary legislation.
- (8) If, but for this subsection, an instrument containing electricity capacity regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.

#### **41 Capacity market rules: procedure**

- (1) Before the first exercise by the Secretary of State of the power to make capacity market rules, the Secretary of State must lay a draft of the rules before Parliament.
- (2) 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 rules.
- (3) If no such resolution is made within that period, the Secretary of State may make the rules in the form of the draft.
- (4) Subsection (3) does not prevent a new draft of proposed capacity market rules being laid before Parliament.
- (5) In this section “40-day period”, in relation to a draft of proposed capacity market rules, 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).
- (6) 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.
- (7) Before any exercise by the Secretary of State of a power to make capacity market rules, the Secretary of State must consult—
  - (a) the Authority;
  - (b) any person who is a holder of a licence to supply electricity under section 6(1) (d) of EA 1989;
  - (c) any person who is a capacity provider;
  - (d) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (9) In relation to any exercise by the Secretary of State or the Authority of a power to make capacity market rules, the person making the rules must, as soon as reasonably practicable after they are made, lay them before Parliament and publish them.



## **42 Capacity market rules: further provision**

- (1) Capacity market rules may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (2) A power to make capacity market rules includes a power to amend, add to or remove capacity market rules (and a person exercising such a power may amend, add to or remove provision in capacity market rules made by another person).
- (3) But subsection (2) is subject to provision made by electricity capacity regulations.

## **43 Pilot scheme for electricity demand reduction**

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State in connection with arrangements made—
  - (a) for the purpose of reducing demand for electricity, and
  - (b) wholly or partly for the purpose of determining provision to be included in electricity capacity regulations;and such arrangements are referred to in this section as “a pilot scheme”.
- (2) The Secretary of State must review the operation and effectiveness of any pilot scheme.
- (3) The Secretary of State must set out the results and conclusions of the review in a report to Parliament—
  - (a) by laying a copy of the report before each House of Parliament, or
  - (b) if the Secretary of State determines that the report should be made orally, by making a statement to the House of Parliament of which that Secretary of State is a member.
- (4) A report under subsection (3) must be made as soon as reasonably practicable after the conclusion of the pilot scheme to which the report relates.

# **CHAPTER 4**

## **INVESTMENT CONTRACTS**

## **44 Investment contracts**

Schedule 2 (which makes provision about investment contracts) has effect.

## CHAPTER 5

### CONFLICT OF INTEREST AND CONTINGENCY ARRANGEMENTS

#### **45 Modifications of transmission and other licences: business separation**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) to (e) of EA 1989 (generation, transmission, distribution, supply and interconnector 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 (e) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of imposing measures for or in connection with securing an appropriate degree of business separation between the carrying on of—
  - (a) system operation functions (or any particular such function), and
  - (b) any other functions (including, in a case where a measure relates to a particular system operation function, other system operation functions).
- (3) “System operation functions” are—
  - (a) functions authorised under a transmission licence of co-ordinating and directing the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
  - (b) EMR functions.
- (4) A degree of business separation is “appropriate” for the purposes of subsection (2) if the Secretary of State determines it to be necessary or desirable as a consequence of the conferral of EMR functions.
- (5) In making that determination, the Secretary of State must have regard to the extent to which a measure of the kind mentioned in subsection (2) may affect the efficient and effective carrying on of system operation functions and other functions authorised under a transmission licence.
- (6) The measures referred to in subsection (2) include, in particular, measures for or in connection with securing any of the following—
  - (a) the body corporate that carries on EMR functions does not carry on other functions;
  - (b) limitations are in place in respect of the control or influence that may be exercised over that body by another group undertaking (within the meaning of the Companies Acts - see section 1161 of the Companies Act 2006);
  - (c) separations are in place between—
    - (i) the locations where system operation functions, and other functions, are carried on;
    - (ii) the information technology systems used for the purposes of the carrying on of system operation functions and other functions;
  - (d) the accounting arrangements in relation to system operation functions are separate from those in relation to other functions;

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- (e) persons who participate in the carrying on of system operation functions do not participate in the carrying on of other functions;
  - (f) persons with access to information obtained in the carrying on of system operation functions do not have access to information obtained in the carrying on of other functions.
- (7) The power conferred by subsection (1) may be exercised so as to impose a requirement on a person holding a transmission licence—
- (a) to prepare annual reports about how measures within subsection (2) have been put in place for the year in question, and
  - (b) to submit such reports to either or both of the Secretary of State and the Authority.
- (8) Before making a modification under subsection (1), 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 it appropriate to consult.
- (9) Subsection (8) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (10) In this section—
- “EMR functions” means functions conferred by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “transmission”, “transmission licence” and “transmission system” have the same meaning as in Part 1 of EA 1989.

#### **46 Power to transfer EMR functions**

- (1) The Secretary of State may by order provide that EMR functions carried out by the national system operator are instead to be carried out by an alternative delivery body.
- (2) An order under subsection (1) may be made only if—
- (a) the national system operator has requested the making of the order,
  - (b) an energy administration order is in force in relation to the national system operator,
  - (c) the unsatisfactory performance condition is met (see subsection (3)),
  - (d) it appears to the Secretary of State necessary or desirable to make the order as a result of a change, occurring after the coming into force of this section, in the persons having control of the national system operator (see subsection (4)), or
  - (e) it otherwise appears to the Secretary of State necessary or desirable to make the order in connection with furthering the purposes of—
    - (i) encouraging low carbon electricity generation (within the meaning of Chapter 2), or
    - (ii) providing capacity to meet the demands of consumers for the supply of electricity in Great Britain.
- (3) The unsatisfactory performance condition is met if—
- (a) it appears to the Secretary of State that the national system operator has been failing to carry out its EMR functions in an efficient and effective manner,

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- (b) the Secretary of State has given notice in writing to the national system operator providing particulars of the failure,
  - (c) a period of at least 6 months has passed since the giving of the notice, and
  - (d) it appears to the Secretary of State that the failure so specified is continuing.
- (4) “Control”, in relation to the national system operator, means the power of a person to secure—
- (a) by means of the holding of shares or the possession of voting power in relation to the national system operator or any other body corporate, or
  - (b) as a result of any powers conferred by the articles of association or other document regulating the national system operator or any other body corporate, that the affairs of the national system operator are conducted in accordance with the person’s wishes.
- (5) The Secretary of State must, subject to subsection (6), consult the national system operator before making an order under subsection (1) on the grounds mentioned in subsection (2)(e).
- (6) Subsection (5) does not apply where the Secretary of State considers the urgency of the case makes it inexpedient to consult the national system operator before making the order.
- (7) Where an EMR function has previously been transferred from the national system operator to an alternative delivery body by an order under subsection (1), the Secretary of State may by a further order provide that the function is instead to be carried out by—
- (a) a different alternative delivery body, or
  - (b) the national system operator.
- (8) “Alternative delivery body”, in relation to an order under subsection (1) or (7), means such person as may be specified in the order.
- (9) An order under subsection (1) or (7) that specifies as the alternative delivery body a person other than the Secretary of State requires the consent of that person.
- (10) An order under subsection (7) providing for EMR functions to be carried out by the national system operator requires the consent of the national system operator.
- (11) In this section—
- “EMR functions” means functions conferred on the national system operator by or by virtue of Chapter 2 (contracts for difference), Chapter 3 (capacity market) or Chapter 4 (investment contracts);
  - “energy administration order” has the same meaning as in Chapter 3 of Part 3 of the Energy Act 2004 (see section 154(1) of that Act);
  - “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### **47 Orders under section 46: fees and other supplementary provision**

- (1) A transfer of functions order may provide for an alternative delivery body to require fees to be paid for, or in connection with, the performance of any EMR functions conferred on the body by virtue of the order.

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- (2) The amount of any such fee is the amount specified in, or determined by or in accordance with, the order.
- (3) A transfer of functions order may relate—
  - (a) to all EMR functions that the national system operator or the alternative delivery body is carrying out, or
  - (b) only to such of those functions as are specified in the order.
- (4) A transfer of functions order may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision and savings;
  - (c) make different provision for different cases or circumstances or for different purposes.
- (5) Consequential provision made under subsection (4)(a) may amend, repeal or revoke any provision made by or under an Act, whenever passed or made (including this Act).
- (6) A transfer of functions order is to be made by statutory instrument.
- (7) A statutory instrument containing a transfer of functions order is subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) Schedule 3 (which confers power on the Secretary of State to make transfer schemes in connection with the making of transfer of functions orders) has effect.
- (9) If the Secretary of State makes a transfer of functions order under which any EMR functions of the national system operator are transferred to an alternative delivery body, the Secretary of State must consider the extent to which (if at all) a licence modification power should be exercised as a consequence of the national system operator ceasing to carry out the functions that are transferred.
- (10) In subsection (9) “licence modification power” means a power conferred by section 26, 37 or 45 to modify—
  - (a) a condition of a transmission licence granted to the national system operator under section 6(1)(b) of EA 1989,
  - (b) the standard conditions incorporated in such licences under section 8A of that Act, or
  - (c) a document maintained in accordance with the conditions of such licences, or an agreement that gives effect to a document so maintained.
- (11) In this section—

“alternative delivery body”, “EMR functions” and “national system operator” have the same meaning as in section 46;

“transfer of functions order” means an order under section 46(1) or (7).

## **48 Energy administration orders**

- (1) The Energy Act 2004 is amended as follows.
- (2) In section 154 (energy administration orders), in subsection (3) for “section 155” substitute “—
  - (a) section 155(1), and

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- (b) section 155(9) (if and to the extent that section 155(9) applies in relation to the company).”
- (3) In section 155 (objective of an energy administration), after subsection (7) insert—
  - “(8) Subsection (9) applies if the company in relation to which an energy administration order is made has functions conferred by or by virtue of—
    - (a) Chapter 2, 3 or 4 of Part 2 of the Energy Act 2013, or
    - (b) an order made under section 46 of that Act (power of Secretary of State to transfer certain functions).
  - (9) The objective of an energy administration (in addition to the objective mentioned in subsection (1)) is to secure—
    - (a) that those functions are and continue to be carried out in an efficient and effective manner; and
    - (b) that it becomes unnecessary, by one or both of the means mentioned in subsection (2), for the energy administration order to remain in force for that purpose.
  - (10) The duty under section 154(3), so far as it relates to the objective mentioned in subsection (9)—
    - (a) applies only to the extent that securing that objective is not inconsistent with securing the objective mentioned in subsection (1);
    - (b) ceases to apply in respect of any function of a company if an order is made under section 46 of the Energy Act 2013 as a result of which the function is transferred from that company to another person.”

## CHAPTER 6

### ACCESS TO MARKETS ETC

#### *Market participation and liquidity*

#### **49 Power to modify licence conditions etc: market participation and liquidity**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 6(1)(a) or (d) of EA 1989 (generation 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) or (d) 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) only for the following purposes—
  - (a) facilitating participation in the wholesale electricity market in Great Britain, whether by licence holders or others;
  - (b) promoting liquidity in that market.
- (3) Modifications made by virtue of that power may include—

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- (a) provision imposing obligations in relation to the sale or purchase of electricity, including, in particular, obligations as to—
    - (i) the terms on which electricity is sold or purchased, and
    - (ii) the circumstances or manner in which electricity is sold or purchased;
  - (b) provision imposing restrictions on the sale or purchase of electricity to or from group undertakings;
  - (c) provision imposing obligations in relation to the disclosure or publication of information.
- (4) For the purposes of subsection (3)(b), electricity is sold to or purchased from a group undertaking if the transaction is between undertakings one of which is a group undertaking in relation to the other.

For this purpose, “undertaking” and “group undertaking” have the same meanings as in the Companies Acts (see section 1161 of the Companies Act 2006).

#### *Power purchase agreement scheme*

### **50 Power to modify licence conditions etc to facilitate investment in electricity generation**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(d) 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) only for the purpose of facilitating investment in electricity generation by means of a power purchase agreement scheme.
- (3) For the purposes of this section and section 51—
- (a) a power purchase agreement scheme is a scheme established by supply licence conditions and regulations under section 51 for promoting the availability to electricity generators of power purchase agreements, and
  - (b) “power purchase agreement” means an arrangement under which a licensed supplier agrees to purchase electricity generated by an electricity generator at a discount to a prevailing market price.

For this purpose, “supply licence condition” means any condition, document or agreement of a kind mentioned in subsection (1).

- (4) Provision that may be made under subsection (1) in relation to a power purchase agreement scheme includes provision—
- (a) as to the eligibility of an electricity generator to enter into a power purchase agreement under the scheme;
  - (b) as to the terms of any power purchase agreement to be entered into under the scheme, including provision—

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- (i) for determining the price at which electricity is to be purchased under the agreement (including provision for determining a market price and the amount of a discount at any time);
  - (ii) as to the duration of any such agreement;
  - (c) as to the circumstances in which a licensed supplier is or may be required or permitted to enter, or offer to enter, into a power purchase agreement under the scheme;
  - (d) for the provision of information in connection with the scheme.
- (5) Provision within subsection (4)(c) includes provision for determining which licensed supplier or suppliers is or are to be required or permitted to enter, or offer to enter, into a power purchase agreement with an electricity generator in any particular case.
- (6) Such provision may in particular include provision for the licensed supplier or suppliers in question to be determined—
- (a) by a process involving a determination or determinations by one or more of the following—
    - (i) the Secretary of State;
    - (ii) the Authority;
    - (iii) the electricity generator;
  - (b) by auction or other competitive process;
- and provision that may be made by virtue of paragraph (b) includes provision as to the circumstances in which a licensed supplier is or may be required or permitted to participate in an auction or other process.
- (7) For the purposes of this section and section 51, “licensed supplier” means the holder of a licence under section 6(1)(d) of EA 1989.

## **51 Power purchase agreement scheme: regulations**

- (1) The Secretary of State may by regulations make provision, in connection with any modifications made under section 50, for or in connection with a power purchase agreement scheme.
- (2) Any such regulations may in particular—
- (a) make provision for apportioning amongst licensed suppliers, or any of them, all or any part of the value of any or all of the costs or benefits of any licensed supplier in connection with the scheme;
  - (b) confer functions on the Secretary of State or the Authority (which may include provision for directions to be given to the Authority by the Secretary of State);
  - (c) make provision for the delegation of functions conferred on the Secretary of State or the Authority by the regulations or by virtue of section 50;
  - (d) include provision for obligations imposed by the regulations on licensed suppliers to be enforceable by the Authority as if they were relevant requirements on a regulated person for the purposes of section 25 of EA 1989;
  - (e) make provision about the provision of information in connection with the scheme.
- (3) Provision that may be included in regulations under this section by virtue of subsection (2)(a) includes, in particular, provision—
- (a) for requiring licensed suppliers to pay a levy to the Authority at specified times;



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- (b) specifying how such a levy is to be calculated;
  - (c) conferring an entitlement on a licensed supplier to receive a payment from the Authority.
- (4) Provision which may be included in regulations by virtue of subsection (3) includes provision for the Secretary of State or the Authority to determine what is to be taken into account as a cost or benefit of any licensed supplier in connection with the scheme and its value.
- (5) Regulations under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (6) Before making any regulations under this section, the Secretary of State must consult—
- (a) licensed suppliers,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (8) Regulations under this section must be made by statutory instrument.
- (9) An instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## **52 Power purchase agreement scheme: disclosure of information**

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

- (a) in subsection (1)(a), after “2010” insert “or section 50 or 51 of the Energy Act 2013”;
- (b) in subsection (3)(a), after “2010” insert “, section 50 or 51 of the Energy Act 2013”.

## **53 Principal objective and general duties: power purchase agreement scheme**

Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State or the Authority conferred by or by virtue of section 50 or 51, or section 54 so far as it relates to a power purchase agreement scheme, as they apply in relation to functions under Part 1 of that Act.

### *Supplementary*

## **54 Licence modifications under sections 49 and 50: further provisions**

- (1) A modification of a licence under section 49(1) or 50(1) may in particular include a modification—

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- (a) to provide for a new document to be required to be prepared and maintained in accordance with the conditions of such a licence;
  - (b) to provide for an agreement to give effect to a document so maintained.
- (2) Before making modifications under section 49(1) or 50(1), 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 it appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

## CHAPTER 7

### THE RENEWABLES OBLIGATION: TRANSITIONAL ARRANGEMENTS

#### 55 Closure of support under the renewables obligation

- (1) After section 32L of EA 1989 insert—

##### **“32LA Renewables obligation closure order**

- (1) The Secretary of State may make a renewables obligation closure order.
- (2) A renewables obligation closure order is an order which provides that no renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after a specified date.
- (3) Provision made under subsection (2) may specify different dates in relation to different cases or circumstances.
- (4) The cases or circumstances mentioned in subsection (2) may in particular be described by reference to—
  - (a) accreditation of a generating station, or
  - (b) the addition of generating capacity to a generating station.
- (5) A renewables obligation closure order may include provision about—
  - (a) the meaning of “accreditation” and “generating capacity” in subsection (4);
  - (b) when generating capacity is to be treated as added to a generating station for the purposes of that subsection.
- (6) References in this section to a renewables obligation order are references to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).
- (7) Power to make provision in a renewables obligation order (and any provision contained in such an order) is subject to provision contained in a renewables obligation closure order; but this section is not otherwise to be taken as affecting power to make provision in a renewables obligation order of the kind mentioned in subsection (2).

- (8) Section 32K applies in relation to a renewables obligation closure order as it applies in relation to a renewables obligation order (and subsection (3) above is not to be taken as limiting the application of that section).

### **32LB Renewables obligation closure orders: procedure**

- (1) Before making a renewables obligation closure order, the Secretary of State must consult—
- (a) the Authority,
  - (b) the Council,
  - (c) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (d) such other persons, if any, as the Secretary of State considers appropriate.
- (2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
- (3) A renewables obligation closure order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.”
- (2) In section 32M(1) of EA 1989 (interpretation of sections 32 to 32M)—
- (a) for “32L” substitute “32LB”;
  - (b) after the definition of “renewables obligation order” insert—  
“renewables obligation closure order” is to be construed in accordance with section 32LA;”;
  - (c) in the definition of “specified”, after “renewables obligation order” insert “or a renewables obligation closure order”.
- (3) In section 106 of EA 1989 (regulations and orders), in subsection (2)(b) after “32,” insert “32LA,”.
- (4) In Article 56(1) of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of EA 1989 includes a reference to subsections (1) and (2) of this section.

## **56 Transition to certificate purchase scheme**

- (1) EA 1989 is amended as follows.
- (2) After section 32M insert—

### **“32N The certificate purchase obligation**

- (1) The Secretary of State may make a certificate purchase order.
- (2) A certificate purchase order is an order which imposes the certificate purchase obligation on—
- (a) the purchasing body of GB certificates;
  - (b) the purchasing body of NI certificates.

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- (3) The certificate purchase obligation is that—
  - (a) the purchasing body of GB certificates must pay the redemption value of a GB certificate to the person presenting it;
  - (b) the purchasing body of NI certificates must pay the redemption value of a NI certificate to the person presenting it.
- (4) The purchasing body of GB certificates is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of GB certificates.
- (5) The purchasing body of NI certificates is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of NI certificates.
- (6) A person is an “eligible person” for the purposes of designation under subsection (4)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (7) A person is an “eligible person” for the purposes of designation under subsection (5)(b) if the person is a CFD counterparty at the time when the designation is made.
- (8) Subsection (3) is subject to sections 320 to [322](#).

### **320 Further provision about the certificate purchase obligation**

- (1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.
- (2) A certificate purchase order may, in particular—
  - (a) specify the redemption value of certificates or provide for how the redemption value is to be calculated;
  - (b) provide for different redemption values for successive periods of time;
  - (c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);
  - (d) require the relevant purchasing body or the Secretary of State (if not the relevant purchasing body) to publish the redemption value of certificates by a specified deadline;
  - (e) provide for the manner in which a certificate is to be presented to the relevant purchasing body;
  - (f) provide for the certificate purchase obligation in relation to 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

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- (iv) in other specified cases or circumstances,  
to apply only up to a specified number of the certificates that are presented for payment in any specified period;
  - (g) provide that certificates 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 be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;
  - (h) provide that the certificate purchase obligation is not to apply on presentation of a certificate unless—
    - (i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and
    - (ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);
  - (i) provide for how the relevant purchasing body is to determine whether specified conditions are met;
  - (j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;
  - (k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;
  - (l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;
  - (m) provide for a certificate purchase levy (see section 32P);
  - (n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;
  - (o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.
- (3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(1)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).
- (4) For the purposes of carrying out its functions under a certificate purchase order, the relevant purchasing body may—
- (a) require a person presenting a certificate to provide such information or documentation as the body may reasonably need for such purposes, and
  - (b) determine the form in which, and the time by which, such information or documentation is to be supplied.

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- (5) The certificate purchase obligation does not apply in relation to a certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

### **32P Certificate purchase levy**

- (1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the relevant purchasing body.
- (2) A certificate purchase levy is a levy—
- (a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and
  - (b) payable in respect of each such period by persons who make, or are expected to make, the supplies.
- (3) The order may (without limiting the generality of section 32Z(1)(d)) provide for different rates or different amounts of levy to be charged—
- (a) in different cases or circumstances;
  - (b) in relation to different specified periods.
- (4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.
- (6) The order may, in particular, make provision about any of the following matters—
- (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) the rates or amounts of the levy, or how such rates or amounts are to be determined;
  - (e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;
  - (f) administration of the levy;
  - (g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;
  - (h) provision of information, including its provision to third parties in specified circumstances;
  - (i) enforcement of the levy;
  - (j) insolvency of persons liable to pay the levy;
  - (k) reviews and appeals;
  - (l) the functions of the administrator in connection with the levy.

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- (7) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Great Britain, is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (8) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Northern Ireland, is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (9) A person is an “eligible person” for the purposes of designation under subsection (7)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Secretary of State.
- (10) A person is an “eligible person” for the purposes of designation under subsection (8)(b) if the person is—
  - (a) a CFD counterparty at the time when the designation is made, or
  - (b) the Northern Ireland department.
- (11) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.
- (12) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6) (e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.
- (13) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.
- (14) Provision under subsection (6)(i) may—
  - (a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;
  - (b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

### **32Q Use of levy payments**

- (1) Amounts payable in respect of the certificate purchase levy are to be paid to the administrator of the levy.
- (2) Amounts received by the administrator under subsection (1) must be paid to—

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- (a) the purchasing body of GB certificates, or
  - (b) the purchasing body of NI certificates,in accordance with such provision as may be contained in the order.
- (3) Amounts paid to a purchasing body under subsection (2) may be used by that body only for the purpose of discharging the certificate purchase obligation.
- (4) The order may contain further provision about—
  - (a) the calculation of amounts received by the administrator that are to be paid to a relevant purchasing body;
  - (b) the time by which the administrator must make payments of such amounts to a relevant purchasing body;
  - (c) the manner in which any such payments are to be made;
  - (d) how amounts are to be dealt with for the purposes of subsection (2) where the administrator and a relevant purchasing body to whom they are to be paid are the same person.
- (5) Subsections (2) to (4) are subject to subsections (6) to (10).
- (6) The order may provide for amounts received by the administrator under subsection (1) to be used by the administrator to make payments—
  - (a) into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Authority,
    - (ii) by the Secretary of State, or
    - (iii) by a relevant designated person,in connection with the performance of functions conferred by or under sections 32N to 32Z2;
  - (b) into the Consolidated Fund of Northern Ireland in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Northern Ireland authority, or
    - (ii) by the Northern Ireland department,in connection with the performance of functions conferred by or under sections 32N to 32Z2.
- (7) For the purposes of subsection (6)(a), “relevant designated person” means a person who is designated—
  - (a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);
  - (b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);
  - (c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).
- (8) The order—
  - (a) may exclude amounts of a specified description from being used as mentioned in subsection (6);
  - (b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.



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- (9) The purchasing body of GB certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of GB certificates.
- (10) The purchasing body of NI certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund of Northern Ireland any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of NI certificates.
- (11) In this section “the order”, in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy.

### **32R Designation of a CFD counterparty as purchasing body or administrator**

- (1) This section applies in relation to the designation of a person who is a CFD counterparty—
  - (a) as a relevant purchasing body under section 32N(4)(b) or (5)(b), or
  - (b) as the administrator of the levy under section 32P(7)(b) or (8)(b).
- (2) A designation may be made only with the consent of the person designated.
- (3) A designation does not cease to have effect if the person’s designation as a CFD counterparty ceases to have effect by virtue of section 7(6)(a) or (b) of the Energy Act 2013.
- (4) A designation ceases to have effect if—
  - (a) the Secretary of State by order revokes the designation, or
  - (b) the person withdraws consent to the designation by giving not less than 3 months’ notice in writing to the Secretary of State.
- (5) The Secretary of State may by order make transitional provision in connection with a designation ceasing to have effect.
- (6) An order under subsection (5) may in particular make provision about how obligations, imposed by virtue of a certificate purchase order on a person whose designation ceases to have effect, are to be discharged in any period before or after the time when the designation ceases to have effect.
- (7) Subsection (5) is not to be taken as limiting the power to make transitional provision in a certificate purchase order by virtue of section 32Z(1)(b).

### **32S GB certificates**

- (1) A certificate purchase order may (subject to subsection (3)) 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 GB certificate”) to—
  - (a) the operator of a generating station, or
  - (b) if the order so provides, a person of any other description specified in the order.

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- (2) A GB certificate is to certify—
  - (a) the matters within subsection (4) or (5), or
  - (b) if the order provides that a certificate may certify the matters within subsection (6), (7), (8) or (9), the matters within that subsection.
- (3) A GB certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
  - (a) a renewables obligation order is in force, and
  - (b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity.
- (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, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (5) 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 in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (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, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (7) 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 in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (8) 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.
- (9) The matters within this subsection are—

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- (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 the electricity has been used in a permitted way.
- (10) For the purposes of subsections (8) and (9), 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 (11), 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.
- (11) 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 paragraphs (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.
- (12) Subsection (11) of section 32B (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (11)(b) as it applies for the purposes of subsection (10)(b) of that section.

### **32T NI certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Northern Ireland authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a NI certificate”) to—
  - (a) the operator of a generating station in Northern Ireland, or
  - (b) if the order so provides, a person of any other description.
- (2) A NI certificate is to certify—
  - (a) the matters within subsection (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6) or (7), the matters within that subsection.
- (3) A NI certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—

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- (a) an order under Article 52 of the Energy (Northern Ireland) Order 2003 is in force, and
  - (b) a Northern Ireland RO certificate has been, or could be, issued under that order in respect of the same electricity.
- (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 in Northern Ireland 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 a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) 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 in Northern Ireland 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.
- (7) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, 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) For the purposes of subsections (6) and (7), 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 (9), 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.
- (9) 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 Northern Ireland through a private wire network;
  - (c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;

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- (d) being used, as respects part, as mentioned in one of paragraphs (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 a Northern Ireland supplier to customers in Northern Ireland.
- (10) Paragraph (9) of Article 54 of the Energy (Northern Ireland) Order 2003 (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (9)(b) as it applies for the purposes of paragraph (8)(b) of that Article.

### **32U Sections 32S and 32T: supplemental provision**

- (1) A certificate purchase order may provide—
  - (a) that no certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
  - (b) that 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 relevant 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 relevant authority, and
    - (ii) for the results of that analysis to be made available to the relevant 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.

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- (5) A certificate purchase order may specify—
  - (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of 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 consequences that no certificates are to be issued in respect of any electricity generated by that generating station during that period.
- (7) A certificate purchase order may provide that ownership of a certificate may be transferred—
  - (a) only to persons of a specified description;
  - (b) only if other specified conditions are met.
- (8) A certificate purchase order may specify circumstances in which the relevant authority may revoke a certificate before the certificate purchase obligation in respect of the certificate is discharged (whether before or after the certificate is presented for payment).
- (9) A certificate purchase order must—
  - (a) prohibit the issue of GB certificates certifying that electricity has been supplied to customers in Northern Ireland by virtue of section 32S(5) or (7) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland, and
  - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its presentation for payment for the purposes of the certificate purchase obligation.
- (10) A certificate purchase order may make provision requiring a person to whom a certificate is issued to pay to the relevant authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the authority that—
  - (a) the certificate should not have been issued to that person, and
  - (b) it is not possible to secure the recovery of such an amount by refusing to issue another certificate to the person.
- (11) Provision under subsection (10) may include provision about enforcement and appeals.
- (12) The Authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund.
- (13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

### **32V Certificate purchase orders: amounts of electricity stated in certificates**

- (1) A certificate purchase order may specify the amount of electricity to be stated in each 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 certificate purchase order by virtue of subsection (1).
- (4) Before making any banding provision, the Secretary of State 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 (supplies of electricity from renewable sources exempted from the 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 certificate issued by the relevant authority, and the impact this will have 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, an EU 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—
  - (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 Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).

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- (8) A certificate purchase order may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied.

**32W Section 32V: transitional provision and savings**

- (1) This section applies where a certificate purchase order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—
- (a) the electricity generated by generating stations of such descriptions as may be specified, or
  - (b) so much of the electricity as may be determined in accordance with the order.
- (3) The order may provide for—
- (a) the effect of any banding provision made in a renewables obligation order by virtue of section 32D(1) to apply, in such circumstances as may be specified, in relation to GB certificates as it applied in relation to renewables obligation certificates;
  - (b) the effect of any banding provision made in an order under Article 52 of the Energy (Northern Ireland) Order 2003, by virtue of Article 54B(1) of the Order, to apply, in such circumstances as may be specified, in relation to NI certificates as it applied in relation to Northern Ireland RO certificates.
- (4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.
- (5) Subsection (7) 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.
- (6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (7) A certificate purchase 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 person who made the grant (“the payer”) the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and



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- (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.
- (8) For the purposes of subsection (7)—
- (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.
- (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 or other statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954).
- (10) This section is without prejudice to section 32Z(1)(b).

### **32X Certificate purchase orders: information**

- (1) A certificate purchase order may provide for—
- (a) the Authority to require a person to provide it with information, or with information of a particular kind, which in the Authority’s opinion is relevant to the question whether a GB certificate is, or was or will in future be, required to be issued to the person;
  - (b) the Northern Ireland authority to require a person to provide it with information, or with information of a particular kind, which in the authority’s opinion is relevant to the question whether a NI certificate is, or was or will in future be, required to be issued to the person.
- (2) That information must be given to the relevant authority in whatever form it requires.
- (3) A certificate purchase 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 relevant 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 relevant authority to postpone the issue of certificates 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 relevant authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a specified period.
- (4) The relevant authority may publish information obtained by virtue of subsection (3).

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- (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.

**32Y Certificate purchase orders: corresponding provision**

- (1) This section applies where the Secretary of State exercises a listed power in the making of a certificate purchase order.
- (2) The Secretary of State must—
- (a) so far as the order is made for a GB purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in a renewables obligation order (whenever made, and whether or not made by the Secretary of State) by virtue of the equivalent GB power;
  - (b) so far as the order is made for a NI purpose, exercise the listed power in the way that the Secretary of State considers will replicate the effect of provision contained in an order under Article 52 of the 2003 NI Order (whenever made) by virtue of the equivalent NI power.
- (3) The duty in subsection (2) to exercise any listed power in the way mentioned in that subsection applies only to the extent that it appears to the Secretary of State that—
- (a) it is reasonably practicable to exercise the listed power in that way, and
  - (b) exercising the power in that way is not inconsistent with other duties or requirements of the Secretary of State (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).
- (4) In the Table—
- (a) a “listed power” is any power specified in the first column;
  - (b) the “equivalent GB power”, in relation to a listed power, is the power specified in the corresponding entry in the second column;
  - (c) the “equivalent NI power”, in relation to a listed power, is the power specified in the corresponding entry in the third column, and in that column references to an Article are to an Article of the 2003 NI Order.

<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32O(2)(a)	Sections 32A(2)(a) and 32G(2)(a)	Articles 53(2)(a) and 55(2)(a)
Section 32O(2)(b)	Sections 32A(2)(b) and 32G(2)(c)	Articles 53(2)(b) and 55(2)(c)
Section 32O(2)(c)	Section 32G(2)(e)	Article 55(2)(e)
Section 32O(2)(f)	Section 32A(2)(c)	Article 53(2)(c)
Section 32S	Section 32B	---
Section 32T	---	Article 54
Section 32U(5) and (6)	Section 32C(5) and (6)	Article 54A(5) and (6)

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<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32V(1)	Section 32D(1)	Article 54B(1)
Section 32W(5) to (8)	Section 32E(4) to (6) and (8)	Article 54C(4) to (7) and (8)
Section 32X	Section 32J	Article 55C
Section 32Z2(2) (so far as relating to definition of “renewable sources”) and (3)	Section 32M (so far as relating to that definition) and (2)	Article 55F(1) (so far as relating to that definition) and (2)
Section 32Z2(9)	Section 32M(7)	Article 55F(3)

- (5) The duty in subsection (2), so far as it has effect in relation to the exercise of the listed power under section 32V(1) to specify different amounts of electricity in relation to different cases or circumstances, applies only to the first exercise of that listed power.
- (6) The relevant part of Great Britain to which a renewables obligation order relates may be ignored for the purposes of subsection (2)(a).
- (7) It does not matter for the purposes of subsection (2) whether or not a renewables obligation order, or an order made under Article 52 of the 2003 NI Order, is in force at the time when the listed powers in question are being exercised.
- (8) In this section—
- “2003 NI Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- “GB purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of GB certificates;
- “NI purpose” means the purpose of imposing the certificate purchase obligation on the purchasing body of NI certificates.

### **32Z Certificate purchase orders: general provision**

- (1) A certificate purchase order may—
- make further provision as to the functions of the relevant authority in relation to matters dealt with by the order;
  - make transitional provision and savings;
  - 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;
  - make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision for—
- renewables obligation certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were GB certificates issued in respect of a subsequent period for which the order is in force;

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- (b) Northern Ireland RO certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were NI certificates issued in respect of a subsequent period for which the order is in force.
- (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 or different parts of the United Kingdom.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.
- (5) The Authority and the Northern Ireland authority may enter into arrangements for the Authority to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions conferred on the Northern Ireland authority under, or for the purposes of, a certificate purchase order.
- (6) The duties imposed on the Secretary of State—
  - (a) by section 3A (principal objective and general duties in carrying out functions under this Part), and
  - (b) by section 132(2) of the Energy Act 2013 (duties in relation to strategy and policy statement),
 do not apply in relation to the exercise of a power under section 32N to make a certificate purchase order so far as it is made for or in connection with imposing the certificate purchase obligation on the purchasing body of NI certificates.

### **32Z1 Certificate purchase orders: procedure**

- (1) Before making a certificate purchase order, the Secretary of State must consult—
  - (a) the Authority,
  - (b) the Northern Ireland authority,
  - (c) the Council,
  - (d) the General Consumer Council for Northern Ireland,
  - (e) such electricity suppliers and Northern Ireland suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,
  - (f) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (g) such other persons, if any, as the Secretary of State considers appropriate.
- (2) A certificate purchase order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) The Secretary of State must, subject to subsection (5), consult the Scottish Ministers before making a certificate purchase order that extends to Scotland.

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- (4) The Secretary of State must, subject to subsection (5), obtain the consent of the Northern Ireland department before making a certificate purchase order that extends to Northern Ireland.
- (5) Except as provided by subsection (6), the Secretary of State is not required to—
- (a) consult the Scottish Ministers under subsection (3), or
  - (b) obtain the consent of the Northern Ireland department under subsection (4),
- in respect of any provision of a certificate purchase order that is made by virtue of section 32O(2)(m), 32P or 32Q (which together confer power to make provision about the certificate purchase levy).
- (6) Designation of the Northern Ireland department as the administrator of the certificate purchase levy by virtue of section 32P(8)(b) requires the consent of that department.

### **32Z2 Interpretation of sections 32N to 32Z1**

- (1) In this section and sections 32N to 32Z1 (“the relevant sections”), the following terms have the meanings given in section 32M(1)—
- “fossil fuel” (but see subsection (4));
  - “generated”;
  - “Northern Ireland authority”;
  - “Northern Ireland supplier”;
  - “renewables obligation certificate”;
  - “renewables obligation order”.
- (2) In the relevant sections—
- “administrator”, in relation to the certificate purchase levy, is to be construed in accordance with section 32P(7) to (10);
  - “banding provision” is to be construed in accordance with section 32V(3);
  - “CFD counterparty” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2013 (see section 7 of that Act);
  - “certificate purchase levy” is to be construed in accordance with section 32P;
  - “certificate purchase order” is to be construed in accordance with section 32N;
  - “the certificate purchase obligation” is to be construed in accordance with section 32N(3);
  - “distribution system” includes a distribution system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “distributing” is to be construed accordingly;
  - “GB certificate” is to be construed in accordance with section 32S;
  - “NI certificate” is to be construed in accordance with section 32T;
  - “the Northern Ireland department” means the Department of Enterprise, Trade and Investment;
  - “Northern Ireland RO certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included

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in an order under Article 52 of the Energy (Northern Ireland) Order 2003;

“the purchasing body of GB certificates” is to be construed in accordance with section 32N(4);

“the purchasing body of NI certificates” is to be construed in accordance with section 32N(5);

“relevant authority” means—

- (a) in relation to GB certificates, the Authority;
- (b) in relation to NI certificates, the Northern Ireland authority;

“relevant purchasing body” means—

- (a) in relation to GB certificates, the purchasing body of GB certificates;
- (b) in relation to NI certificates, the purchasing body of NI certificates;

“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 certificate purchase order, means specified in the order;

“transmission system” includes a transmission system within the meaning of Part 2 of the Electricity (Northern Ireland) Order 1992, and “transmitting” is to be construed accordingly.

- (3) For the purposes of the definition of “renewable sources”, a certificate purchase 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 relevant 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 relevant authority;
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the application of the relevant sections to Northern Ireland, “fossil fuel” includes peat.
- (5) In the relevant sections “Northern Ireland” does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).
- (6) A certificate purchase order may provide that “Northern Ireland” includes the territorial sea adjacent to Northern Ireland.
- (7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—

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- (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.
- (8) References in the relevant sections 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.
- (9) A certificate purchase order may make provision, for the purposes of the relevant sections, about the circumstances in which electricity is to be regarded as having been supplied—
  - (a) to customers in Great Britain;
  - (b) to customers in Northern Ireland.”
- (3) In section 106 (regulations and orders), in subsection (2)(b) after “32LA,” (as inserted by section 55(3))” insert “32N, 32R(4),”.
- (4) In section 113 (extent etc), in subsection (3), at the beginning of the list (before the entry for sections 65 to 70) insert “Sections 32N to 32Z2.”.

## CHAPTER 8

### EMISSIONS PERFORMANCE STANDARD

#### 57 Duty not to exceed annual carbon dioxide emissions limit

- (1) The operator of any fossil fuel plant must secure that the emissions of carbon dioxide from it that are attributable to the use of fossil fuel do not exceed EL tonnes of carbon dioxide (“the emissions limit”) in any year, where—

$$EL = R \times C \times 7.446$$

and—

R is the statutory rate of emissions, in g/kWh;

C is the installed generating capacity, in MW, of the electricity generating station comprised in the fossil fuel plant.

- (2) Until (and including) 2044, the statutory rate of emissions is 450 g/kWh.
- (3) In this Chapter, “fossil fuel plant” means an electricity generating station which satisfies the conditions in subsection (4), together with any associated gasification plant and any associated CCS plant.
- (4) Those conditions are that the generating station—
  - (a) is constructed pursuant to a relevant consent given or made on or after the date on which subsection (1) comes into force, and
  - (b) uses—
    - (i) fossil fuel, or
    - (ii) fuel produced by gasification plant.
- (5) Subsection (1) is subject to—
  - (a) section 58, and
  - (b) any provision made by or under regulations made under subsection (6).

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- (6) The Secretary of State may by regulations—
- (a) make provision about the interpretation of the duty imposed by subsection (1) (“the emissions limit duty”);
  - (b) make any provision mentioned in Schedule 4 (application of emissions limit duty to additional cases or subject to modifications).
- (7) Regulations under subsection (6)(a) may, in particular, make provision—
- (a) for determining whether gasification plant or CCS plant (including any CCS plant associated with gasification plant) is associated with a generating station;
  - (b) for determining the emissions from fossil fuel plant;
  - (c) for the use of fossil fuel—
    - (i) for operating plant that is ancillary to a generating station for safety purposes, or in an emergency, or
    - (ii) by a network generating station at a time when it is not exporting to a network,
 to be disregarded for any of the purposes of this Chapter;
  - (d) for determining (whether by apportionment or otherwise) which emissions from fossil fuel plant are attributable to the use of fossil fuel;
  - (e) for determining when plant ceases to be, or to be part of, fossil fuel plant;
  - (f) specifying the meaning of any of the following expressions—
    - (i) “operator”, in relation to fossil fuel plant;
    - (ii) “installed generating capacity”;
    - (iii) “constructed pursuant to a relevant consent”, in relation to an electricity generating station;
  - (g) specifying any category of emissions by reference to provision made, or that may from time to time be made, by or under regulations implementing the ETS Directive.
- (8) Provision that may be made by virtue of subsection (7)(d) includes provision for treating emissions attributable to the supply of heat to customers from combined heat and power plant as not being attributable to the use of fossil fuel.

## **58 Introduction of carbon capture and storage: exemption from emissions limit**

- (1) The emissions limit duty does not apply during the exemption period in relation to fossil fuel plant for which there is a complete CCS system.
- (2) For this purpose, a complete CCS system, in relation to fossil fuel plant, is a system of plant and facilities for—
  - (a) capturing some or all of the carbon dioxide (or any substance consisting primarily of carbon dioxide) that is produced by, or in connection with, generation of electricity by the generating station comprised in the fossil fuel plant,
  - (b) transporting the carbon dioxide (or substance) captured, and
  - (c) disposing of it by way of permanent storage.
- (3) The exemption period for any fossil fuel plant is the period—
  - (a) beginning with the first day on which the fossil fuel plant and its complete CCS system are ready for use, and



- (b) ending with—
  - (i) the expiry of 3 years beginning with that day, or
  - (ii) 31 December 2027,whichever is earlier.
- (4) In subsection (3), “use” includes testing in connection with the generation of electricity on a commercial scale.
- (5) Subsection (1) is subject to any provision made by regulations under section 57(6)(b).

## **59 Suspension etc of emissions limit in exceptional circumstances**

- (1) This section applies where an appropriate authority considers that there is an electricity shortfall, or a significant risk of an electricity shortfall.
- (2) Where this section applies, the appropriate authority may direct that, in relation to relevant plant, the emissions limit duty is to be treated as—
  - (a) suspended for a period specified in the direction, or
  - (b) modified for a period specified in the direction.
- (3) For the purposes of this section, there is an electricity shortfall when—
  - (a) the electricity available in Great Britain is insufficient to meet demands in Great Britain, or
  - (b) the electricity available in Northern Ireland is insufficient to meet demands in Northern Ireland.
- (4) For this purpose—
  - (a) electricity available in Great Britain or Northern Ireland includes electricity that is available there by virtue of an electricity interconnector (within the meaning of Part 1 of EA 1989), and
  - (b) subject to that, it is for the appropriate authority to determine what is to be regarded as available electricity.
- (5) Before giving a direction under this section, the Secretary of State must consult—
  - (a) the Scottish Ministers,
  - (b) the Welsh Ministers, and
  - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (6) As soon as practicable after giving a direction under this section, the Secretary of State must lay before Parliament a document containing—
  - (a) a copy of the direction, and
  - (b) a statement of the Secretary of State’s reasons for making the direction.
- (7) Before giving a direction under this section, the Department of Enterprise, Trade and Investment must consult such persons as it considers it appropriate to consult.
- (8) As soon as practicable after giving a direction under this section, the Department of Enterprise, Trade and Investment must lay before the Northern Ireland Assembly a document containing—
  - (a) a copy of the direction, and
  - (b) a statement of the Department’s reasons for making the direction.
- (9) A direction under this section—

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- (a) is to be made in writing;
  - (b) may include incidental, supplementary and transitional provision;
  - (c) may be varied or revoked by a further direction under this section.
- (10) Provision that may be made by virtue of subsection (9)(b) includes, in particular, provision imposing requirements on enforcing authorities (within the meaning of Schedule 5) for Great Britain or Northern Ireland, as the case may be.
- (11) Each appropriate authority—
- (a) must issue (and may from time to time revise) a statement of the Secretary of State’s or, as the case may be, the Department’s policy in relation to making directions under this section,
  - (b) must publish the up-to-date text of the statement whenever it is issued or revised, and
  - (c) must have regard to the statement in making any direction under this section.
- (12) For the purposes of this section—
- “appropriate authority” means—
    - (a) the Secretary of State, or
    - (b) the Department of Enterprise, Trade and Investment;
  - “relevant generating station” means a generating station which satisfies paragraphs (a) and (b) of section 57(4);
  - “relevant plant” means—
    - (a) in relation to a direction by the Secretary of State, fossil fuel plant which consists of or includes a relevant generating station in Great Britain;
    - (b) in relation to a direction by the Department of Enterprise, Trade and Investment, fossil fuel plant which consists of or includes a relevant generating station in Northern Ireland.

## **60 Monitoring and enforcement**

- (1) It is the duty of the appropriate national authority to make arrangements for monitoring compliance with, and enforcement of, the emissions limit duty.
- (2) The appropriate national authority may by regulations make any provision mentioned in Schedule 5 (monitoring compliance with, and enforcement of, the emissions limit duty).
- (3) The arrangements under subsection (1) must include arrangements for giving effect to directions under section 59 (and, in particular, for compliance by enforcing authorities with any requirements imposed on them under subsection (10) of that section).
- (4) In this section (and Schedule 5), the “appropriate national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Scotland, the Scottish Ministers;
  - (c) in relation to Wales, the Welsh Ministers;
  - (d) in relation to Northern Ireland, the Department of Environment.
- (5) Subsection (4) is subject to paragraph 5 of Schedule 5 (which provides for the Secretary of State to make certain provision for Scotland, Wales and Northern Ireland).

## 61 Interpretation of Chapter 8

(1) In this Chapter—

“carbon capture and storage technology” means technology for doing, or contributing to the doing of, any of the following things—

- (a) capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by, or in connection with, generation of electricity on a commercial scale;
- (b) transporting such carbon dioxide (or substance) that has been captured;
- (c) disposing of such carbon dioxide (or substance) that has been captured, by way of permanent storage;

“CCS plant” means plant, or a system of plant and facilities, that uses, or is capable of using, carbon capture and storage technology;

“distribution system” has the meaning given by section 4(4) of EA 1989 (and “distributed” is to be read accordingly);

“emissions limit duty” means the duty imposed by section 57(1);

“ETS Directive” means Directive [2003/87/EC](#) of the European Parliament and of the Council (as amended from time to time);

“fossil fuel” means—

- (a) coal;
- (b) lignite;
- (c) peat;
- (d) natural gas (within the meaning of the Energy Act 1976);
- (e) crude liquid petroleum;
- (f) bitumen;
- (g) any substance which—
  - (i) is produced directly or indirectly from a substance mentioned in paragraphs (a) to (f) for use as a fuel, and
  - (ii) when burned, produces a greenhouse gas (within the meaning given in section 92 of the Climate Change Act 2008);

“fossil fuel plant” has the meaning given by section 57(3);

“gasification plant” means plant which—

- (a) uses fossil fuel, and
- (b) produces fuel for use in an electricity generating station;

“network generating station” means a station that exports to a network;

“relevant consent” means—

- (a) consent granted under section 36 of EA 1989 or Article 39 of the Electricity (Northern Ireland) Order 1992 ([S.I. 1992/231 \(N.I. 1\)](#)), or
- (b) an order granting development consent under the Planning Act 2008;

“transmission system” has the meaning given by section 4(4) of EA 1989;

“year”, except in section 58, means any calendar year for which the emissions limit is defined by section 57.

(2) For the purposes of this Chapter, a generating station exports to a network when it is generating any electricity that is conveyed from it by means of a transmission system or is distributed by means of a distribution system.

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## **62 Regulations under Chapter 8**

- (1) Any regulations made by the Secretary of State or the Welsh Ministers under this Chapter must be made by statutory instrument.
- (2) Any power to make regulations under this Chapter that is exercisable by the Department of Environment is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) An instrument containing—
  - (a) regulations under section 57 (whether or not also containing regulations by the Secretary of State under section 60), or
  - (b) regulations by the Secretary of State under section 60 which amend or repeal any provision of primary legislation,may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.
- (4) Any other instrument containing regulations made by the Secretary of State under section 60 is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) If, but for this subsection, an instrument containing regulations by the Secretary of State under this Chapter would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (6) Regulations by the Scottish Ministers under section 60 are—
  - (a) if they amend or repeal any provision of primary legislation, subject to the affirmative procedure;
  - (b) otherwise, subject to the negative procedure.
- (7) An instrument containing regulations by the Welsh Ministers under section 60—
  - (a) may not be made if the regulations amend or repeal any provision of primary legislation unless a draft has been laid before, and approved by a resolution of, the National Assembly for Wales;
  - (b) otherwise, is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) Statutory rules containing regulations by the Department of Environment under section 60 are—
  - (a) if the regulations amend or repeal any provision of primary legislation, subject to affirmative resolution (within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954), and
  - (b) otherwise, subject to negative resolution (within the meaning of section 41(4) of that Act).
- (9) Any regulations under this Chapter may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.

- (10) Regulations under section 57 that apply in relation to Northern Ireland may be made only with the consent of the Department of Enterprise, Trade and Investment.
- (11) Before making any regulations under section 57 or 60, the Secretary of State must consult—
- (a) in the case of regulations under section 57 that will apply in relation to Scotland or Wales, the Scottish Ministers or the Welsh Ministers, respectively, and
  - (b) in any case, such persons (or such other persons) as the Secretary of State considers it appropriate to consult.
- (12) Before making any regulations under section 60, the Scottish Ministers or the Welsh Ministers must consult such persons as they think appropriate.
- (13) Subsections (11) and (12) may be satisfied by consultation before, as well as after, the passing of this Act.

## CHAPTER 9

### MISCELLANEOUS

#### **63 Exemption from liability in damages**

- (1) The Secretary of State may include in regulations under section 6 or 27, or under paragraph 6 of Schedule 2, provision that—
- (a) the national system operator,
  - (b) any director of the national system operator, or
  - (c) any employee, officer or agent of the national system operator,
- is not liable in damages for anything done or omitted in the exercise or purported exercise of a relevant function specified in the regulations.
- (2) A relevant function is a function conferred by or by virtue of Chapter 2, 3 or 4.
- (3) Provision made by virtue of subsection (1) may not exempt a person from liability for an act or omission which—
- (a) is shown to be in bad faith;
  - (b) is unlawful by virtue of section 6(1) of the Human Rights Act 1998 (public authorities not to act incompatibly with convention rights);
  - (c) is a breach of a duty owed by virtue of section 27(4) of EA 1989 (compliance with final or provisional order under that Act).
- (4) Whenever—
- (a) the Secretary of State makes or revokes regulations of a kind mentioned in subsection (1) or exercises a modification power under section 26 or 37 or paragraph 19 of Schedule 2, and
  - (b) provision is not in force under subsection (1) in respect of a relevant function,
- the Secretary of State must publish a statement of the reasons why no such provision is in force.

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- (5) In this section “national system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in EA 1989 - see section 4(4) of that Act).

#### **64 Licence modifications: general**

- (1) This section applies in relation to a power to make modifications conferred by—
- (a) section 26, 37, 45, 49 or 50, or
  - (b) paragraph 19 of Schedule 2.
- (2) Before making modifications under a power to which this section applies (“a relevant power”) the Secretary of State must lay a draft of the modifications before Parliament.
- (3) 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.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) 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).
- (7) 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.
- (8) A relevant power—
- (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, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
- (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence;
  - (c) may do any of the things authorised for licences of that type by section 7(2A), (3), (4) or (6A) of EA 1989.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) If under a relevant power the Secretary of State makes modifications of the standard conditions of a licence, 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.
- (12) A modification made under a relevant power 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 EA 1989.
- (13) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.

## **65 Consequential amendments**

- (1) In section 3A of EA 1989 (principal objective and general duties), in subsection (2) (b) for “or sections 26 to 29 of the Energy Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013”.
- (2) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
  - (a) after paragraph (e) omit “or”;
  - (b) after paragraph (f) insert “or
  - (g) under the Energy Act 2013.”.
- (3) In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences)—
  - (a) after paragraph (d) omit “or”;
  - (b) after paragraph (e) insert “, or
  - (f) under the Energy Act 2013.”.
- (4) In section 146(5) of the Energy Act 2004 (standard conditions for electricity interconnectors), for “or under section 98 of the Energy Act 2011” substitute “, under section 98 of the Energy Act 2011 or under section 37 or 45 of the Energy Act 2013.”.

## **66 Review of certain provisions of Part 2**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which this Act is passed, the Secretary of State must carry out a review of the provisions of the following Chapters of this Part—
  - (a) Chapter 2 (contracts for difference);
  - (b) Chapter 3 (capacity market);
  - (c) Chapter 5 (conflicts of interest and contingency arrangements);
  - (d) Chapter 6 (access to markets);
  - (e) Chapter 7 (the renewables obligation: transitional arrangements);
  - (f) Chapter 8 (emissions performance standard).
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
  - (a) set out the objectives of the provisions of each Chapter subject to review,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.

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- (4) The Secretary of State must lay the report before Parliament.

### **PART 3**

#### NUCLEAR REGULATION

### **CHAPTER 1**

#### THE ONR’S PURPOSES

#### **67 The ONR’s purposes**

In this Part, “the ONR’s purposes” means—

- (a) the nuclear safety purposes (see section 68),
- (b) the nuclear site health and safety purposes (see section 69),
- (c) the nuclear security purposes (see section 70),
- (d) the nuclear safeguards purposes (see section 72), and
- (e) the transport purposes (see section 73).

#### **68 Nuclear safety purposes**

- (1) In this Part, the “nuclear safety purposes” means the purposes of protecting persons against risks of harm from ionising radiations from GB nuclear sites, including through—
- (a) the design and construction of relevant nuclear installations and their associated sites,
  - (b) arrangements for the operation and decommissioning of, and other processes connected with, relevant nuclear installations,
  - (c) arrangements for the storage and use of nuclear matter on GB nuclear sites, and
  - (d) arrangements to minimise those risks in the event of an escape or release of such ionising radiations.
- (2) For this purpose, ionising radiations from GB nuclear sites are ionising radiations from—
- (a) relevant nuclear installations, or
  - (b) nuclear matter stored or used on a GB nuclear site;
- and an escape or release of ionising radiations from a GB nuclear site includes ionising radiations from nuclear matter that has escaped or been released on or from a GB nuclear site.
- (3) In this section—
- “GB nuclear site” means a nuclear site in England, Wales or Scotland;
  - “nuclear installation” has the same meaning as in the Nuclear Installations Act 1965 (see section 26 of that Act);
  - “nuclear matter” has the same meaning as in that Act (see section 26 of that Act);



“relevant nuclear installation” means a nuclear installation on a site (its “associated site”) in England, Wales or Scotland for which a nuclear site licence is required by virtue of the installation (and includes a proposed or former nuclear installation in respect of which such a licence would be or has ever been so required).

## **69 Nuclear site health and safety purposes**

- (1) In this Part, the “nuclear site health and safety purposes” means so much of the general purposes of Part 1 of the 1974 Act as consists of the following purposes—
- (a) securing the health, safety and welfare of persons at work on GB nuclear sites;
  - (b) protecting persons, other than persons at work on GB nuclear sites, against risks to health or safety arising out of or in connection with the activities of persons at work on GB nuclear sites;
  - (c) controlling the storage and use on GB nuclear sites of dangerous substances and generally preventing the unlawful acquisition, possession and use of such substances on or from such sites.
- (2) In this section—
- (a) “dangerous substances” means radioactive, explosive, highly flammable or otherwise dangerous substances, other than nuclear matter;
  - (b) “GB nuclear site” and “nuclear matter” have the same meanings as in section 68.
- (3) Section 1(3) of the 1974 Act (interpretation of references to risks relating to persons at work) applies for the purposes of this section as it applies for the purposes of Part 1 of the 1974 Act.

## **70 Nuclear security purposes**

- (1) In this Part, the “nuclear security purposes” means the purposes of ensuring the security of—
- (a) civil nuclear premises;
  - (b) nuclear material used or stored on civil nuclear premises and equipment or software used or stored on such premises in connection with activities involving nuclear material;
  - (c) other radioactive material used or stored on civil nuclear sites and equipment or software used or stored on civil nuclear sites in connection with activities involving such other radioactive material;
  - (d) civil nuclear construction sites and equipment used or stored on civil nuclear construction sites;
  - (e) equipment or software in the United Kingdom which—
    - (i) is capable of being used in, or in connection with, the enrichment of uranium, and
    - (ii) is in the possession or control of a person involved in uranium enrichment activities;
  - (f) sensitive nuclear information which is in the United Kingdom in the possession or control of—
    - (i) a person who is involved in activities on or in relation to civil nuclear premises or who is proposing or likely to become so involved;

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- (ii) a person involved in uranium enrichment activities; or
  - (iii) a person who is storing, transporting or transmitting the information for or on behalf of a person falling within sub-paragraph (i) or (ii);
  - (g) nuclear material which is being (or is expected to be)—
    - (i) transported within the United Kingdom or its territorial sea,
    - (ii) transported (outside the United Kingdom and its territorial sea) to or from any civil nuclear premises in the United Kingdom, or
    - (iii) carried on board a United Kingdom ship,
 other than material being (or expected to be) so transported or carried for defence purposes;
  - (h) information relating to the security of anything mentioned in paragraphs (a) to (g).
- (2) For the purposes of subsection (1), ensuring the security of any site or premises includes doing so by means of the design of, or of anything on, the site or premises.
- (3) In this section—
- “civil nuclear construction site” means a site—
    - (a) on which works are being carried out with a view to its becoming a civil nuclear site, and
    - (b) which is situated within 5 kilometres of an existing nuclear site;
  - “civil nuclear premises” means—
    - (a) a civil nuclear site, or
    - (b) other premises on which nuclear material is used or stored which are not controlled or operated wholly or mainly for defence purposes;
  - “civil nuclear site” means a nuclear site other than one controlled or operated wholly or mainly for defence purposes;
  - “defence purposes” means the purposes of the department of the Secretary of State with responsibility for defence;
  - “enrichment of uranium” means a treatment of uranium that increases the proportion of isotope 235 contained in the uranium;
  - “equipment” includes equipment that has not been assembled and its components;
  - “nuclear material” means any fissile material in the form of—
    - (a) uranium metal, alloy or compound, or
    - (b) plutonium metal, alloy or compound,
 or any other fissile material prescribed by regulations made by the Secretary of State;
  - “sensitive nuclear information” means—
    - (a) information relating to, or capable of use in connection with, the enrichment of uranium, or
    - (b) information of a description for the time being specified in a notice under section 71;
  - “United Kingdom ship” means a ship registered in the United Kingdom under Part 2 of the Merchant Shipping Act 1995.

## **71 Notice by Secretary of State to ONR specifying sensitive nuclear information**

- (1) This section applies where the Secretary of State considers that information of any description relating to activities carried out on or in relation to civil nuclear premises is information which needs to be protected in the interests of national security.
- (2) The Secretary of State may give a notice to the ONR under this section specifying that description of information.
- (3) The Secretary of State may vary or revoke any notice given under this section by giving a further notice to the ONR.
- (4) Before giving a notice under this section, the Secretary of State must consult the ONR.
- (5) In this section “civil nuclear premises” has the same meaning as in section 70.

## **72 Nuclear safeguards purposes**

- (1) In this Part, the “nuclear safeguards purposes” means the purposes of—
  - (a) ensuring compliance by the United Kingdom or, as the case may be, enabling or facilitating compliance by a Minister of the Crown, with the safeguards obligations, and
  - (b) the development of any future safeguards obligations.
- (2) In subsection (1)(a) “the safeguards obligations” has the meaning given by section 93.

## **73 Transport purposes**

- (1) In this Part, the “transport purposes” means the purposes of—
  - (a) protecting against risks relating to the civil transport of radioactive material in Great Britain by road, rail or inland waterway which arise out of, or in connection with, the radioactive nature of the material, and
  - (b) ensuring the security of radioactive material during civil transport in Great Britain by road, rail or inland waterway.
- (2) For this purpose—
  - (a) “civil transport” means transport otherwise than for the purposes of the department of the Secretary of State with responsibility for defence;
  - (b) “radioactive material”—
    - (i) in relation to transport by road, has the same meaning as in ADR,
    - (ii) in relation to transport by rail, has the same meaning as in RID, and
    - (iii) in relation to transport by inland waterway, has the same meaning as in ADN;
  - (c) the transport of material begins with any preparatory process (such as packaging) and continues until the material has been unloaded at its destination.
- (3) In subsection (2)(b)—

“ADN” means the Regulations annexed to the European Agreement concerning the International Carriage of Dangerous Goods by Inland Waterway (signed at Geneva on 26 May 2000);

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“ADR” means Annexes A and B to the European Agreement concerning the International Carriage of Dangerous Goods by Road (signed at Geneva on 30 September 1957);

“RID” means the Annex to Appendix C to the Convention concerning International Carriage by Rail (signed at Berne on 9 May 1980) (the Regulation concerning the International Carriage of Dangerous Goods by Rail);

and any reference to, or to an appendix to, an Agreement, a Convention or a Treaty, or to an annex to any of them, is to it as it has effect for the time being.

- (4) The Secretary of State may by regulations modify the definition of “radioactive material”.

## CHAPTER 2

### NUCLEAR REGULATIONS

#### 74 Nuclear regulations

- (1) The Secretary of State may make regulations (to be known as “nuclear regulations”) for any of the following purposes—
- (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the transport purposes.
- (2) Schedule 6 (which gives examples of particular kinds of provision that may be made by nuclear regulations) has effect.
- (3) Nuclear regulations may—
- (a) confer functions on the ONR;
  - (b) create powers which inspectors may be authorised to exercise by their instruments of appointment under paragraph 2 of Schedule 8;
  - (c) create offences (as to which see section 75);
  - (d) modify—
    - (i) any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions;
    - (ii) any provision of the Nuclear Safeguards Act 2000;
  - (e) provide for exemptions (including conditional exemptions) from any prohibition or requirement imposed by or under any of the relevant statutory provisions;
  - (f) provide for defences in relation to offences under any of the relevant statutory provisions;
  - (g) provide for references in the regulations to any specified document to operate as references to that document as revised or re-issued from time to time.
- (4) Provision that may be included by virtue of subsection (3)(a) includes, in particular,—
- (a) provision requiring compliance with directions by the ONR;

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- (b) provision conferring power for the ONR to authorise other persons to exercise functions relating to the grant of exemptions of a kind mentioned in subsection (3)(e).
- (5) Nuclear regulations may make provision—
- (a) applying to acts done outside the United Kingdom by United Kingdom persons;
  - (b) for enabling offences under any of the relevant statutory provisions to be treated as having been committed at any specified place for the purpose of conferring jurisdiction on any court in relation to any such offence.
- (6) In subsection (5) “United Kingdom person” means—
- (a) an individual who is—
    - (i) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen,
    - (ii) a person who under the British Nationality Act 1981 is a British subject, or
    - (iii) a British protected person within the meaning of that Act,
  - (b) a Scottish partnership, or
  - (c) a body incorporated under the law of any part of the United Kingdom.
- (7) Before making nuclear regulations, the Secretary of State must consult—
- (a) the ONR,
  - (b) if the regulations would modify any provision of health and safety regulations (within the meaning of Part 1 of the 1974 Act), the Health and Safety Executive, and
  - (c) such other persons (if any) as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7)(a) does not apply if the regulations give effect, without modification, to proposals submitted by the ONR under section 81(1)(a)(i).
- (9) Nuclear regulations which include any provisions to which any paragraph of subsection (10) applies must identify those provisions as such.
- (10) This subsection applies to any provisions of nuclear regulations which are made for—
- (a) the nuclear security purposes,
  - (b) the nuclear safeguards purposes, or
  - (c) both of those purposes,
- and for no other purpose.
- (11) In this section (and Schedule 6) “specified” means specified in nuclear regulations.

## **75 Nuclear regulations: offences**

- (1) Nuclear regulations may provide for an offence under the regulations to be triable—
- (a) only summarily, or
  - (b) either summarily or on indictment.
- (2) Nuclear regulations may provide for an offence under the regulations that is triable either way to be punishable—
- (a) on conviction on indictment—

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- (i) with imprisonment for a term not exceeding the period specified, which may not exceed 2 years,
    - (ii) with a fine, or
    - (iii) with both,
  - (b) on summary conviction—
    - (i) with imprisonment for a term not exceeding the period specified,
    - (ii) with, in England and Wales, a fine or, in Scotland or Northern Ireland, a fine not exceeding the amount specified (which must not exceed £20,000), or
    - (iii) with both.
- (3) A period specified under subsection (2)(b)(i) may not exceed—
  - (a) in relation to England and Wales—
    - (i) 6 months, in relation to offences committed before the date on which section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s power to imprison) comes into force,
    - (ii) 12 months, in relation to offences committed after that date,
  - (b) in relation to Scotland, 12 months,
  - (c) in relation to Northern Ireland, 6 months.
- (4) Nuclear regulations may provide for a summary offence under the regulations to be punishable—
  - (a) with imprisonment for a term not exceeding the period specified,
  - (b) with—
    - (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or
  - (c) with both.
- (5) A period specified under subsection (4)(a) may not exceed—
  - (a) in relation to England and Wales—
    - (i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences) comes into force, or
    - (ii) 51 weeks, in relation to offences committed after that date,
  - (b) in relation to Scotland, 12 months,
  - (c) in relation to Northern Ireland, 6 months.
- (6) In this section “specified” means specified in nuclear regulations.

## 76 Nuclear regulations: civil liability

- (1) Nuclear regulations may provide for breach of a relevant nuclear duty to be actionable (whether or not they also provide for it to be an offence).
- (2) Except so far as nuclear regulations provide, any such breach does not give rise to a claim for breach of statutory duty.
- (3) Nuclear regulations may provide for—
  - (a) defences in relation to any action for breach of a relevant nuclear duty;

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- (b) any term of an agreement which purports to exclude or restrict liability for breach of a relevant nuclear duty to be void.
- (4) For this purpose “relevant nuclear duty” means a duty imposed by—
  - (a) nuclear regulations, or
  - (b) any provision of, or made under, the Nuclear Installations Act 1965 that is a relevant statutory provision.
- (5) Nothing in this section affects any right of action or defence which otherwise exists or may be available.

### CHAPTER 3

#### OFFICE FOR NUCLEAR REGULATION

#### **77 The Office for Nuclear Regulation**

- (1) There is to be a body corporate known as the Office for Nuclear Regulation.
- (2) In this Part that body is referred to as “the ONR”.
- (3) Schedule 7 makes further provision about the ONR.

### CHAPTER 4

#### FUNCTIONS OF THE ONR

##### *Functions of ONR: general*

#### **78 Principal function**

- (1) The ONR must do whatever it considers appropriate for the ONR’s purposes.
- (2) That includes, so far as it considers appropriate, assisting and encouraging others to further those purposes.

#### **79 Codes of practice**

- (1) The ONR may, in accordance with section 80—
  - (a) issue codes of practice giving practical guidance as to the requirements of any provision of the relevant statutory provisions;
  - (b) revise or withdraw a code of practice issued under this section.
- (2) A code of practice (including a revised code) must specify the relevant statutory provisions to which it relates.
- (3) References in this Part to an approved code of practice are references to a code issued under this section as it has effect for the time being.
- (4) A person’s failure to observe any provision of an approved code of practice does not of itself make the person liable to any civil or criminal proceedings.

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- (5) But subsections (6) to (8) apply to any proceedings for an offence where—
- (a) the offence consists of failing to comply with any requirement or prohibition imposed by or under any of the relevant statutory provisions, and
  - (b) at the time of the alleged failure, there was an approved code of practice relating to the provision.
- (6) Any provision of the code of practice which appears to the court to be relevant to the alleged offence is admissible in evidence in the proceedings.
- (7) Where—
- (a) in order to establish that the defendant failed to comply with the requirement or prohibition, the prosecution must prove any matter,
  - (b) the court is satisfied that a provision of the code of practice is relevant to that matter, and
  - (c) the prosecution prove that, at a material time, the defendant failed to observe that provision of the code of practice,
- that matter is to be taken as proved unless the defendant proves that the requirement or prohibition was complied with in some other way.
- (8) A document purporting to be an approved code of practice is to be taken to be such an approved code unless the contrary is proved.

## **80 Procedure for issue, revision or withdrawal of codes of practice**

- (1) The ONR may—
- (a) issue or revise a code of practice under section 79 only in accordance with subsection (8);
  - (b) withdraw a code of practice under that section only in accordance with subsection (11).
- (2) Before issuing, or revising or withdrawing, a code of practice, the ONR must submit a proposal to the Secretary of State.
- (3) Before submitting a proposal to the Secretary of State the ONR must consult—
- (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
  - (b) any other government department or other person that the ONR considers it appropriate to consult,
- about the proposal.
- (4) A direction under subsection (3)(a) may be general or may relate to a particular code, or codes of a particular kind.
- (5) A proposal for issuing or revising a code of practice must include a draft code of practice or, as the case may be, proposed revisions of a code of practice.
- (6) Where the ONR submits a proposal for issuing or revising a code of practice to the Secretary of State, the Secretary of State may approve the draft code of practice, or proposed revisions, as the case may be—
- (a) without modification, or
  - (b) with the consent of the ONR, with modifications.



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- (7) If the Secretary of State approves the draft code or proposed revisions, the Secretary of State must lay before Parliament the draft code or proposed revisions in the form approved.
- (8) Where—
- (a) the Secretary of State has laid a draft code or proposed revisions of a code before Parliament, and
  - (b) no negative resolution is made within the 40-day period,
- the ONR may issue the code in the form of the draft laid before Parliament or, as the case may be, make the proposed revisions in the form so laid.
- (9) For the purpose of subsection (8)—
- (a) a “negative resolution”, in relation to a draft code or proposed revisions, means a resolution of either House of Parliament not to approve the draft code or proposed revisions;
  - (b) the “40-day period”, in relation to a draft of a code or proposed revisions, 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).
- (10) For the purposes of calculating the 40-day period, no account is to be taken of any period during which—
- (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than 4 days.
- (11) Where—
- (a) the ONR submits to the Secretary of State a proposal for the withdrawal of a code of practice, and
  - (b) the Secretary of State approves the proposal,
- it may withdraw the code.
- (12) The ONR must—
- (a) publish any code of practice issued under section 79;
  - (b) when it revises such a code, publish—
    - (i) a notice to that effect, and
    - (ii) a copy of the revised code;
  - (c) when it withdraws such a code, publish a notice to that effect.

## **81 Proposals about orders and regulations**

- (1) The ONR may from time to time—
- (a) submit proposals to the Secretary of State for—
    - (i) nuclear regulations,
    - (ii) regulations under section 85,
    - (iii) regulations under section 101,
    - (iv) health and safety fees regulations, or
    - (v) orders or regulations under a relevant enactment;
  - (b) submit proposals to the Health and Safety Executive for relevant health and safety regulations.

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(2) In this section—

“health and safety fees regulations” means regulations under section 43(2) of the 1974 Act in relation to fees payable for or in connection with the performance of a function by or on behalf of—

- (a) the ONR, or
- (b) a health and safety inspector;

“relevant enactment” means—

- (a) section 3 of the Nuclear Safeguards and Electricity (Finance) Act 1978 (regulations for giving effect to certain provisions of Safeguards Agreement);
- (b) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
- (c) section 5(3) of that Act (rights of access for Agency inspectors);
- (d) section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);

“relevant health and safety regulations” means regulations under section 15 of the 1974 Act so far as they can be made for the nuclear site health and safety purposes.

(3) Before submitting any such proposal, the ONR must consult—

- (a) any government department or other person that the Secretary of State has directed the ONR to consult, and
- (b) any other government department or other person that the ONR considers it appropriate to consult.

(4) A direction under subsection (3)(a) may be general or may relate to a particular proposal, or to proposals of a particular kind.

## **82 Enforcement of relevant statutory provisions**

(1) The ONR must make adequate arrangements for the enforcement of the relevant statutory provisions.

(2) In this Part, “relevant statutory provisions” means—

- (a) the provisions of—
  - this Part, and
  - nuclear regulations;
- (b) the provisions made by or under the following sections of the Nuclear Installations Act 1965, so far as they have effect in England and Wales or Scotland—
  - section 1;
  - sections 3 to 6;
  - section 22;
  - section 24A; and
- (c) the provisions of the Nuclear Safeguards Act 2000.

## **83 Inspectors**

Schedule 8 (appointment and powers of inspectors) has effect.

## **84 Investigations**

- (1) The ONR may—
  - (a) investigate and make a report (“a special report”) on any relevant matter, or
  - (b) authorise another person to do so.
- (2) The ONR may publish or arrange for the publication of—
  - (a) a special report, or
  - (b) so much of a special report as the ONR considers appropriate.
- (3) In this section “relevant matter” means any accident, occurrence, situation or other matter which the ONR considers it necessary or desirable to investigate—
  - (a) for any of the ONR’s purposes, or
  - (b) with a view to the making of—
    - (i) nuclear regulations, or
    - (ii) regulations under section 15 of the 1974 Act (health and safety regulations) so far as they can be made for the nuclear site health and safety purposes.
- (4) The ONR may pay such remuneration, expenses and allowances as it may determine to a person who—
  - (a) is not a member or member of staff of the ONR, and
  - (b) investigates a relevant matter or makes a special report under subsection (1), or assists in doing so.
- (5) The ONR may make such payments as it may determine to meet the other costs (if any) of an investigation or special report under subsection (1).
- (6) The ONR must consult the Office of Rail Regulation before taking any step under subsection (1) in relation to a matter which appears to the ONR to be, or likely to be, relevant to the railway safety purposes (within the meaning given in paragraph 1 of Schedule 3 to the Railways Act 2005).
- (7) Subsection (2) is subject to section 94.

## **85 Inquiries**

- (1) The ONR may, with the consent of the Secretary of State, direct an inquiry to be held into any matter if it considers the inquiry necessary or desirable for any of the ONR’s purposes.
- (2) In this Part “ONR inquiry” means an inquiry under this section.
- (3) An ONR inquiry must be held in accordance with regulations made by the Secretary of State.
- (4) Except as provided by the regulations—
  - (a) an ONR inquiry is to be held in public; and
  - (b) any report made by the person holding an ONR inquiry is to be published.
- (5) The regulations may in particular make provision—
  - (a) conferring on the person holding an ONR inquiry and any person assisting that person—
    - (i) powers of entry and inspection;

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- (ii) powers of summoning witnesses to give evidence or produce documents;
  - (iii) power to take evidence on oath and to administer oaths;
  - (iv) power to require the making of declarations;
  - (b) as to circumstances in which—
    - (i) an ONR inquiry or any part of it is to be held in private;
    - (ii) any report, or part of a report, made by the person holding an ONR inquiry is not to be published;
  - (c) conferring functions on the ONR or the Secretary of State;
  - (d) creating summary offences.
- (6) An offence under the regulations may be made punishable with—
- (a) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
  - (b) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale.
- (7) Subsection (8) applies where—
- (a) the ONR directs an ONR inquiry to be held into a matter arising in Scotland, and
  - (b) the matter in question causes the death of a person.
- (8) Unless the Lord Advocate otherwise directs, no inquiry is to be held with regard to the death of that person under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976.

## **86 Inquiries: payments and charges**

- (1) The ONR may pay such remuneration, expenses and allowances as it may determine to—
- (a) a person holding an ONR inquiry;
  - (b) any assessor appointed to assist a person holding an ONR inquiry.
- (2) The ONR may pay to persons attending an ONR inquiry as witnesses such expenses as it may determine.
- (3) The ONR may make such payments as it may determine to meet the other costs (if any) of an ONR inquiry.
- (4) The ONR may require such person or persons to make such payments to it as it considers appropriate in connection with an ONR inquiry.
- (5) The aggregate of the payments required under subsection (4) must not exceed the ONR's costs that are attributable to the ONR inquiry.
- (6) No payment may be required under subsection (4) except with the consent of the Secretary of State.

### *Other functions*

#### **87 Provision of information**

- (1) The ONR must make such arrangements as it considers appropriate for providing information that it holds that is relevant to the ONR's purposes.
- (2) Arrangements that may be made under subsection (1) are arrangements of any description, including arrangements—
  - (a) for providing information to any person or category of persons (whether or not concerned with matters relevant to the ONR's purposes);
  - (b) for providing information on request or on the ONR's initiative;
  - (c) for providing only such information as the ONR considers appropriate.
- (3) This section is subject to section 94.

#### **88 Research, training etc**

- (1) The ONR—
  - (a) may carry out research in connection with the ONR's purposes, or arrange for such research to be carried out on its behalf, and
  - (b) must, if it considers it appropriate to do so, publish the results of any such research or arrange for them to be published.
- (2) The ONR may make payments for research to be carried out in connection with the ONR's purposes and for the dissemination of information derived from such research.
- (3) The ONR may provide, or make arrangements for the provision of, training to any person in connection with the ONR's purposes.
- (4) Arrangements under subsection (3) may include provision for payments to be made to the ONR by or on behalf of—
  - (a) other parties to the arrangements,
  - (b) persons to whom the training is provided.

#### **89 Provision of information or advice to relevant authorities**

- (1) The ONR must, on request, provide a relevant authority with relevant information or relevant advice.
- (2) Relevant information is information about the ONR's activities which is requested—
  - (a) in the case of information requested by a Minister of the Crown—
    - (i) for the purpose of monitoring the ONR's performance of its functions,  
or
    - (ii) for the purpose of any proceedings in Parliament,
  - (b) in any case, in connection with any matter with which the relevant authority requesting it is concerned.
- (3) The reference in subsection (2) to the ONR's activities includes a reference to—
  - (a) the activities of inspectors appointed by the ONR under—
    - (i) Schedule 8,
    - (ii) section 19 of the 1974 Act, or

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- (iii) Article 26 of the Regulatory Reform (Fire Safety) Order 2005 ([S.I. 2005/1541](#)),  
 in their capacity as such inspectors, and
  - (b) the activities of enforcing officers appointed by the ONR under section 61(3) of the Fire (Scotland) Act 2005 ([asp. 5](#)) in their capacity as such enforcing officers.
- (4) Relevant advice is advice on a matter with which the relevant authority requesting it is concerned where the matter—
- (a) is relevant to the ONR’s purposes, or
  - (b) is one on which expert advice is obtainable from any member or member of staff of the ONR.
- (5) The ONR may require a relevant authority to whom information or advice is provided under subsection (1) to pay a fee in respect of the ONR’s costs reasonably incurred in providing the authority with—
- (a) relevant information requested under subsection (2)(b), or
  - (b) relevant advice.
- (6) The Secretary of State may by regulations provide that subsection (5) is not to apply in particular cases or classes of case or in particular circumstances.
- (7) The duty under subsection (1) is in addition to any other duty or power of the ONR to provide information or advice.
- (8) In this section “relevant authority” means any of the following—
- (a) a Minister of the Crown;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a Northern Ireland Department;
  - (e) the Health and Safety Executive;
  - (f) the Health and Safety Executive for Northern Ireland;
  - (g) the Civil Aviation Authority;
  - (h) the Office of Rail Regulation.

## 90 Arrangements with government departments etc

- (1) If the condition in subsection (2) is met, the ONR may enter into an agreement with a Minister of the Crown, a government department or a public authority for the ONR to perform any function exercisable by the Minister, department or authority.
- (2) The condition is that—
- (a) the function is—
    - (i) a function of the Health and Safety Executive of investigating or making a special report under section 14 of the 1974 Act, or
    - (ii) a function of the Office of Rail Regulation of investigating or making a special report under paragraph 4 of Schedule 3 to the Railways Act 2005, or
  - (b) the Secretary of State considers that the function in question can appropriately be performed by the ONR.
- (3) The functions to which an agreement under subsection (1) may relate—

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- (a) in the case of an agreement with a Minister of the Crown, include a function not conferred by an enactment;
  - (b) do not include any power to make regulations or other instruments of a legislative character.
- (4) An agreement under subsection (1) may provide for functions to be performed with or without payment.
- (5) The ONR may provide services or facilities, with or without payment, otherwise than for the ONR's purposes, to a government department or public authority in connection with the exercise of that department's or authority's functions.

## **91 Provision of services or facilities**

- (1) The ONR may provide services and facilities for the ONR's purposes to any person.
- (2) The ONR may, with the consent of the Secretary of State, provide any relevant services to any person, whether or not in the United Kingdom.
- (3) In subsection (2), "relevant services" means services which—
- (a) are not relevant to the ONR's purposes, but
  - (b) are in a field in which any member or member of staff of the ONR has particular expertise.
- (4) The Secretary of State may give consent for the purposes of subsection (2)—
- (a) in relation to particular arrangements for the provision of services, or
  - (b) generally in relation to such arrangements of a particular description.
- (5) Arrangements for the provision of services to a person under subsection (2) are to be on such terms as to payment as that person and the ONR may agree.

### *Exercise of functions: general*

## **92 Directions from Secretary of State**

- (1) The Secretary of State may give the ONR a direction as to the exercise by it of—
- (a) its functions generally, or
  - (b) any of its functions specifically.
- (2) A direction given by the Secretary of State under subsection (1)—
- (a) may modify a function of the ONR, but
  - (b) must not confer functions on the ONR (other than a function of which it was deprived by a previous direction given under this section).
- (3) The Secretary of State may give the ONR such directions as appear to the Secretary of State to be necessary or desirable in the interests of national security.
- (4) A direction given by the Secretary of State under subsection (3) may—
- (a) modify a function of the ONR,
  - (b) confer a function on the ONR.
- (5) A direction under subsection (1) or (3) must not be given in relation to the exercise of a regulatory function in a particular case.

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- (6) If the Secretary of State is satisfied that there are exceptional circumstances relating to national security which justify giving a direction under this subsection, the Secretary of State may give the ONR a direction as to the exercise by the ONR of a regulatory function in a particular case.
- (7) A direction given under subsection (6) must be for the nuclear security purposes.
- (8) The Secretary of State must lay before Parliament a copy of any direction given under this section.
- (9) Subsection (8) does not apply to a direction under subsection (6) if the Secretary of State considers that publishing the direction would be contrary to the interests of national security; but, in that event, the Secretary of State must lay before Parliament a memorandum stating that such a direction has been given and the date on which it was given.

### **93 Compliance with nuclear safeguards obligations**

- (1) The ONR must do such things as it considers best calculated to secure compliance by the United Kingdom or, as the case may be, to enable or facilitate compliance by a Minister of the Crown, with the safeguards obligations.
- (2) For the purposes of this Part “the safeguards obligations” are—
  - (a) Articles 77 to 85 of the Treaty establishing the European Atomic Energy Community, signed at Rome on 25 March 1957,
  - (b) the agreement made on 6 September 1976 between the United Kingdom, the European Atomic Energy Community and the International Atomic Energy Agency for the application of safeguards in the United Kingdom in connection with the Treaty on the Non-Proliferation of Nuclear Weapons,
  - (c) the protocol signed at Vienna on 22 September 1998 additional to the agreement mentioned in paragraph (b), and
  - (d) such other obligations, agreements or arrangements relating to nuclear safeguards as may be specified in a notice given to the ONR by the Secretary of State;

and any reference in paragraphs (a) to (c) to a treaty, agreement or protocol is to it as it has effect for the time being.
- (3) The Secretary of State may vary or revoke a notice given under subsection (2)(d) by giving a further notice to the ONR.
- (4) Before giving a notice under this section, the Secretary of State must consult the ONR.
- (5) The ONR must publish any notice given under this section.
- (6) Subsection (1) is not to be taken to affect the generality of section 78.

### **94 Consent of Secretary of State for certain communications**

- (1) The ONR must not issue any communication to which this section applies except with the consent of the Secretary of State.
- (2) This section applies to—
  - (a) any—
    - (i) security guidance, or



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- (ii) statement of the ONR’s nuclear security policy,  
that the ONR considers concerns any matter to which any government policy on national security relates;
- (b) any other communication of a description that the Secretary of State has directed should be submitted to the Secretary of State before being issued.

This is subject to subsection (3).

- (3) This section does not apply to—
  - (a) a code of practice issued under section 79;
  - (b) the ONR’s strategy or annual plan or a report under paragraph 24 of Schedule 7;
  - (c) advice given in a particular case.

- (4) In this section—
  - “government policy on national security” means any current policy which relates to national security and—
    - (a) has been published by or on behalf of Her Majesty’s Government, or
    - (b) has been notified to the ONR by the Secretary of State;
  - “security guidance” means any guidance to which the ONR’s nuclear security policy is relevant;
  - “the ONR’s nuclear security policy” means the ONR’s policy with respect to the exercise of its functions, or the functions of inspectors, so far as relevant to the nuclear security purposes.

- (5) The Secretary of State may give a direction under subsection (2)(b) in relation to a description of communication only if it appears to the Secretary of State—
  - (a) that—
    - (i) a communication of that description might contain security guidance or information about the ONR’s nuclear security policy, or
    - (ii) the ONR’s nuclear security policy might otherwise be relevant to such a communication, and
  - (b) that such a communication might concern any matter to which any government policy on national security relates.
- (6) The Secretary of State may give the ONR a general consent in relation to the issue of a particular description of communication which would otherwise fall within subsection (2)(a).
- (7) If the Secretary of State has given such a general consent, the ONR need not seek the Secretary of State’s particular consent in relation to the issue of a communication of that description unless directed by the Secretary of State to do so.

## **95 Power to arrange for exercise of functions by others**

- (1) If the condition in subsection (2) is satisfied, the ONR may make arrangements with a government department or other person for that department or person to perform any of the ONR’s functions, with or without payment.
- (2) That condition is that the Secretary of State considers that the function or functions in question can appropriately be performed by the government department or other person.

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## **96 Co-operation between ONR and Health and Safety Executive**

- (1) The Health and Safety Executive and the ONR must enter into and maintain arrangements with each other for securing co-operation and the exchange of information in connection with the carrying out of any of their functions.
- (2) The Health and Safety Executive and the ONR must—
  - (a) review the arrangements from time to time, and
  - (b) revise them when they consider it appropriate to do so.

### *Information etc*

## **97 Power to obtain information**

- (1) The ONR may by notice require a person to provide information which the ONR needs for carrying out its functions.

This is subject to subsection (4).

- (2) A notice may require information to be provided—
  - (a) in a specified form or manner;
  - (b) at a specified time;
  - (c) in respect of a specified period.
- (3) In particular, a notice may require the person to whom it is given to make returns to the ONR containing information about matters specified in the notice at times or intervals so specified.
- (4) No notice may be given under this section which imposes a requirement which could be imposed by a notice served by the ONR under section 2 of the Nuclear Safeguards Act 2000 (information and records for purposes of the Additional Protocol).
- (5) It is an offence to refuse or fail to comply with a notice under this section.
- (6) A person who commits an offence under this section is liable—
  - (a) on summary conviction, to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

## **98 Powers of HMRC in relation to information**

- (1) The Commissioners for Her Majesty's Revenue and Customs may disclose information about imports to—
  - (a) the ONR,
  - (b) an inspector, or
  - (c) a health and safety inspector,for the purpose of facilitating the ONR, inspector or health and safety inspector to carry out any function.

- (2) For this purpose, “information about imports” means information obtained or held by the Commissioners for the purposes of the exercise of their functions in relation to imports.
- (3) Information may be disclosed to the ONR, an inspector or a health and safety inspector under subsection (1) whether or not the disclosure of the information has been requested by or on behalf of the ONR, inspector or health and safety inspector.

## **99 HMRC power to seize articles etc to facilitate ONR and inspectors**

- (1) An officer of Revenue and Customs may seize any imported article or substance and detain it for the purpose of facilitating the ONR or an inspector to carry out any function under the relevant statutory provisions.
- (2) It is an offence for a person intentionally to obstruct an officer of Revenue and Customs in the exercise of powers under subsection (1).
- (3) A person who commits an offence under subsection (2) is liable on summary conviction—
  - (a) to imprisonment for a term not exceeding 51 weeks (in England and Wales), 12 months (in Scotland) or 6 months (in Northern Ireland),
  - (b) to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding level 5 on the standard scale, or
  - (c) to both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (alteration of penalties for summary offences), the reference in subsection (3)(a), as it has effect in England and Wales, to 51 weeks is to be read as a reference to 6 months.
- (5) Anything seized and detained under subsection (1)—
  - (a) must not be detained for more than 2 working days, and
  - (b) must be dealt with during the period of detention in such manner as the Commissioners for Her Majesty’s Revenue and Customs may direct.
- (6) In subsection (5), the reference to 2 working days is a reference to the period of 48 hours beginning when the article or substance in question is seized but disregarding any time falling on a Saturday or Sunday, or on Good Friday or Christmas Day or on a day which is a bank holiday in the part of the United Kingdom where it is seized.

## **100 Disclosure of information**

Schedule 9 (disclosure of information) has effect.

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## *Fees*

### **101 Fees**

- (1) The Secretary of State may by regulations provide for fees to be payable for, or in connection with, the performance of any of the following functions (whenever conferred)—
  - (a) any function of the ONR or an inspector under any of the relevant statutory provisions;
  - (b) any function of the ONR under regulations under section 80 of the Anti-terrorism, Crime and Security Act 2001 (prohibition of disclosures of uranium enrichment technology);
  - (c) any function of any other person under any of the relevant statutory provisions.
- (2) The amount of any fee under regulations under this section must be—
  - (a) specified in the regulations, or
  - (b) determined by or in accordance with the regulations.
- (3) Regulations under this section may provide for the amounts of fees to be different in different cases and, in particular, for fees in respect of the same function to be of different amounts in different circumstances.
- (4) Regulations under this section may not provide for a fee to be payable by anyone in the capacity of—
  - an employee,
  - a person seeking employment,
  - a person training for employment, or
  - a person seeking training for employment.
- (5) For the purposes of subsection (4)—
  - (a) “employee” and “employment” have the same meanings as in Part 1 of the 1974 Act, and
  - (b) an industrial rehabilitation course provided by virtue of the Employment and Training Act 1973 is to be treated as training for employment.
- (6) Before making regulations under subsection (1), the Secretary of State must consult—
  - (a) the ONR, and
  - (b) such other persons (if any) as the Secretary of State considers it appropriate to consult.
- (7) Subsection (6)(a) does not apply if the regulations give effect, without modification, to any proposals submitted by the ONR under section 81(1)(a)(iii).

## CHAPTER 5

### SUPPLEMENTARY

#### *General duties of employers, employees and others*

#### **102 General duty of employees at work in relation to requirements imposed on others**

- (1) Every employee, while at work, must co-operate with any person (whether or not the employer) on whom a requirement is imposed by or under any relevant provision so far as necessary to enable the requirement to be complied with.
- (2) Failure to comply with the duty in subsection (1) is an offence.
- (3) A person who commits an offence under subsection (2) is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding the statutory maximum (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (4) In the application of subsection (3) to England and Wales in relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates' court's power to imprison), the reference in subsection (3)(a)(i) to 12 months is to be read as a reference to 6 months.
- (5) In this section—
  - (a) “employee” and “employer” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” means any of the relevant statutory provisions other than—
    - (i) any provision of the Nuclear Safeguards Act 2000,
    - (ii) any provision of nuclear regulations which is identified under section 74(9) as having been made solely for the nuclear safeguards purposes.

#### **103 Duty not to interfere with or misuse certain things provided under statutory requirements**

- (1) It is an offence intentionally or recklessly to interfere with or misuse anything provided in the interests of health, safety or welfare in pursuance of any of the relevant statutory provisions.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction—

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- (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
- (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
- (iii) to both;
- (b) on conviction on indictment—
  - (i) to imprisonment for a term not exceeding 2 years,
  - (ii) to a fine, or
  - (iii) to both.
- (3) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s powers to imprison), the reference in subsection (2)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

#### **104 Duty not to charge employees for certain things**

- (1) It is an offence for an employer to impose a charge, or allow a charge to be imposed, on an employee in respect of anything done or provided in pursuance of a specific requirement imposed by or under any relevant provision.
- (2) A person who commits an offence under this section is liable—
  - (a) on summary conviction to—
    - (i) in England and Wales, a fine, or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding £20,000;
  - (b) on conviction on indictment, to a fine.
- (3) In this section—
  - (a) “employer” and “employee” have the same meanings as in Part 1 of the 1974 Act (see section 53(1) of that Act), and
  - (b) “relevant provision” has the same meaning as in section 102.

### *Offences*

#### **105 Offences relating to false information and deception**

- (1) It is an offence for a person—
  - (a) to make a statement which the person knows to be false, or
  - (b) recklessly to make a statement which is false,
 in the circumstances mentioned in subsection (2).
- (2) Those circumstances are where the statement is made—
  - (a) in purported compliance with any requirement to provide information imposed by or under any of the relevant statutory provisions, or
  - (b) for the purposes of obtaining the issue of a document under any of the relevant statutory provisions (whether for the person making the statement or anyone else).
- (3) It is an offence for a person—
  - (a) intentionally to make a false entry in a relevant document, or

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- (b) with intent to deceive, to make use of any such entry which the person knows to be false.
- (4) In subsection (3) “relevant document” means any register, record, notice or other document which is required to be kept or given by or under any of the relevant statutory provisions.
- (5) It is an offence for a person, with intent to deceive—
  - (a) to use a relevant document,
  - (b) to make or have possession of a document so closely resembling a relevant document as to be calculated to deceive.
- (6) In subsection (5) “relevant document” means a document—
  - (a) issued or authorised to be issued under any of the relevant statutory provisions, or
  - (b) required for the purpose of any of those provisions.
- (7) A person who commits an offence under this section is liable—
  - (a) on summary conviction—
    - (i) to imprisonment for a term not exceeding 12 months (in England and Wales or Scotland) or 6 months (in Northern Ireland),
    - (ii) to a fine (in England and Wales) or a fine not exceeding £20,000 (in Scotland or Northern Ireland), or
    - (iii) to both;
  - (b) on conviction on indictment—
    - (i) to imprisonment for a term not exceeding 2 years,
    - (ii) to a fine, or
    - (iii) to both.
- (8) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (general limit on magistrates’ court’s powers to imprison), the reference in subsection (7)(a)(i), as it has effect in England and Wales, to 12 months is to be read as a reference to 6 months.

## **106 Provision relating to offences under certain relevant statutory provisions**

- (1) Schedule 10 (provision relating to offences under certain relevant statutory provisions) has effect.
- (2) That Schedule contains provision about the following matters—
  - (a) the place where an offence involving plant or a substance may be treated as having been committed;
  - (b) the extension of time for bringing summary proceedings in certain cases;
  - (c) the continuation of offences;
  - (d) where an offence committed by one person is due to the act or default of another person, the liability of that other person;
  - (e) offences by bodies corporate or partnerships;
  - (f) restrictions on the persons who may institute proceedings in England and Wales;
  - (g) powers of inspectors to prosecute offences;

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- (h) the burden of proof in certain cases relating to what is practicable or what are the best means for doing something;
- (i) reliance on entries in a register or other document as evidence;
- (j) power of the court to order a defendant to take remedial action.

### *Civil liability*

#### **107 Civil liability: saving for section 12 of the Nuclear Installations Act 1965**

Nothing in this Part affects the operation of section 12 of the Nuclear Installations Act 1965 (right to compensation by virtue of certain provisions of that Act).

### *Supplementary*

#### **108 Reporting requirements of Secretary of State**

- (1) As soon as reasonably practicable after the end of the financial year, the Secretary of State must make a report to each House of Parliament on the use of the Secretary of State's powers under this Part during the year.
- (2) The Secretary of State must lay a copy of any such report before Parliament.

#### **109 Notices etc**

- (1) In this section references to a notice are to a notice or other document that is required or authorised to be given to any person under a relevant provision.
- (2) A notice to the person must be in writing.
- (3) A notice may be given by—
  - (a) delivering it to the person,
  - (b) leaving it at the person's proper address,
  - (c) sending it by post to the person at that address, or
  - (d) in the case of a notice to be given to the owner or occupier of any premises (whether or not a body corporate), in accordance with subsection (9), (10) or (11).
- (4) A notice may—
  - (a) in the case of a body corporate, be given in accordance with subsection (3) to a director, manager, secretary or other similar officer of the body corporate, and
  - (b) in the case of a partnership, be given in accordance with subsection (3) to a partner or a person having the control or management of the partnership business or, in Scotland, the firm.
- (5) For the purposes of this section and section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the "proper address" is—
  - (a) in the case of a notice to be given to a body corporate or an officer of the body, the address of the registered or principal office of the body;
  - (b) in the case of a notice to be given to a partnership, a partner or a person having the control or management of the partnership business, the address of the principal office of the partnership;



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- (c) in any other case, the last known address of the person to whom the notice is to be given.
- (6) For the purposes of subsection (5), the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (7) Subsection (8) applies if—
  - (a) a person has specified an address in the United Kingdom as one at which the person, or someone on the person’s behalf, will accept documents of the same description as a notice, and
  - (b) the address so specified is not the person’s proper address (as determined under subsection (5)).
- (8) The specified address is also to be treated as the person’s proper address for the purposes of this section and section 7 of the Interpretation Act 1978 in its application to this section.
- (9) A notice that is to be given to the owner or occupier of any premises may be given by—
  - (a) sending it by post to the person at those premises, or
  - (b) addressing it by name to the person and delivering it to some responsible person who is or appears to be resident or employed at the premises.
- (10) If the name or address of an owner or occupier of premises cannot be ascertained after reasonable inquiry, a notice to the owner or occupier may be given by—
  - (a) addressing it by the description “owner” or “occupier” of the premises to which the notice relates (and describing the premises), and
  - (b) delivering it to some responsible person who is or appears to be resident or employed there.
- (11) If there is no person as mentioned in subsection (10)(b), then the notice may be given by fixing it, or a copy of it, to some conspicuous part of the premises.
- (12) This section is subject to provision made in regulations under this Part in respect of notices given under the regulations.
- (13) In this section—
  - “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;
  - “employed” has the same meaning as in the 1974 Act;
  - “relevant provision” means any of the relevant statutory provisions other than a provision of the Nuclear Safeguards Act 2000;and references to giving a notice include similar expressions (such as serving or sending).

## **110 Electronic delivery of notices etc**

- (1) This section applies where—
  - (a) section 109 authorises the giving of a notice or other document by its delivery to a particular person (“the recipient”), and
  - (b) the notice or other document is transmitted to the recipient—
    - (i) by means of an electronic communications network, or

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- (ii) by other means but in a form that requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of section 109 as a delivery of the notice or other document to the recipient, but only if the recipient has indicated to the person making the transmission (“the sender”) a willingness to receive the notice or other document in the form and manner used.
- (3) An indication to the sender for the purposes of subsection (2)—
  - (a) must be given to the sender in such manner as the sender may require,
  - (b) may be a general indication or an indication that is limited to notices or other documents of a particular description,
  - (c) must state the address to be used,
  - (d) must be accompanied by such other information as the sender requires for the making of the transmission, and
  - (e) may be modified or withdrawn at any time by a notice given to the sender in such manner as the sender may require.
- (4) In this section “electronic communications network” has the same meaning as in the Communications Act 2003; and the reference to giving a notice is to be read in accordance with section 109.

## **111 Crown application: Part 3**

- (1) Subject as follows, this Part, and regulations made under it, bind the Crown.
- (2) Part 2 of Schedule 8 (inspectors: improvement and prohibition notices) does not bind the Crown.
- (3) Any other provision of, or of regulations under, this Part under which a person may be prosecuted for an offence—
  - (a) does not bind the Crown, but
  - (b) applies to persons in the public service of the Crown as it applies to other persons.
- (4) So far as it applies to nuclear regulations, subsection (3) is subject to any provision made by those regulations.
- (5) For the purposes of this Part and regulations made under this Part, persons in the service of the Crown are to be treated as employees of the Crown (whether or not they would be so treated apart from this subsection).
- (6) The Secretary of State may, by order—
  - (a) amend this section so as to provide for any provision made by or under this Part to apply to the Crown, or not to apply to the Crown, to any extent;
  - (b) amend any provision of sections 68 to 73 so far as it affects the extent to which any of the ONR’s purposes relates to the Crown or any of the purposes of the Crown.
- (7) Provision that may be made under subsection (6) includes in particular provision altering whether, or the extent to which, any of the ONR’s purposes relates to—
  - (a) sites or premises used or occupied by the Crown,
  - (b) sites controlled or occupied to any extent for defence purposes (within the meaning of section 70), or

(c) transport for those purposes.

(8) Nothing in this section authorises proceedings to be brought against Her Majesty in her private capacity (within the meaning of the Crown Proceedings Act 1947).

## 112 Interpretation of Part 3

(1) In this Part—

“the 1974 Act” means the Health and Safety at Work etc. Act 1974;

“approved code of practice” has the meaning given by section 79(3);

“financial year”, in relation to the ONR, has the meaning given by paragraph 28 of Schedule 7;

“health and safety inspector” means a person appointed by the ONR under section 19 of the 1974 Act;

“improvement notice” has the meaning given by paragraph 3(2) of Schedule 8;

“inspector” means an inspector appointed under Part 1 of Schedule 8 (unless otherwise specified);

“member of staff”, in relation to the ONR, is to be read in accordance with paragraph 2(2) of Schedule 7;

“modify” includes amend, repeal or revoke (and “modification” is to be read accordingly);

“nuclear regulations” has the meaning given by section 74(1);

“nuclear site” means—

(a) a site in respect of which a nuclear site licence is in force, or

(b) a site in respect of which a period of responsibility has not ended;

“nuclear site licence” has the same meaning as in the Nuclear Installations Act 1965 (see section 1 of that Act);

“ONR” means the Office for Nuclear Regulation;

“ONR inquiry” has the meaning given by section 85(2);

“period of responsibility”, in relation to a site, means the period of responsibility (within the meaning given in section 5 of the Nuclear Installations Act 1965 (revocation and surrender of licences)) in respect of a nuclear site licence granted at any time in respect of the site;

“personal injury” includes—

(a) any disease, and

(b) any impairment of a person’s physical or mental condition;

“prohibition notice” has the meaning given by paragraph 4(2) of Schedule 8;

“regulatory function”, in relation to the ONR, means—

(a) a function of giving or revoking permission or approval in relation to any material, premises or activity;

(b) a function of imposing conditions or requirements in relation to any material, premises or activity;

(c) a function, other than a function under section 84 (investigations), which relates to securing, monitoring or investigating compliance with conditions or requirements (however imposed) in relation to any material, premises or activity;

(d) a function which relates to the enforcement of such requirements;

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“relevant power” has the meaning given by paragraph 2 of Schedule 8;  
 “relevant statutory provisions” has the meaning given by section 82(2)  
 (unless otherwise specified).

- (2) The following apply for the purposes of this Part as they apply for the purposes of Part 1 of the 1974 Act—
- (a) section 52(1) of that Act (meaning of “work” and “at work”);
  - (b) the power conferred by section 52(2)(a) of that Act to extend the meaning of “work” and “at work”.

### **113 Subordinate legislation under Part 3**

- (1) Any power to make subordinate legislation under this Part is exercisable by statutory instrument.
- (2) An instrument containing (whether alone or with other provision)—
  - (a) nuclear regulations which fall within subsection (3), or
  - (b) an order under section 111,
 may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (3) Nuclear regulations fall within this subsection if—
  - (a) they are the first nuclear regulations to be made,
  - (b) they include provision amending or repealing any provision of—
    - (i) the Nuclear Installations Act 1965, or
    - (ii) the Nuclear Safeguards Act 2000, or
  - (c) they include provision creating a new offence by virtue of section 75;
 and for this purpose nuclear regulations which revoke and re-enact an offence are not to be regarded as creating a new offence.
- (4) An instrument containing an order under paragraph 26 of Schedule 7 (payments and borrowing) may not be made unless a draft of the instrument has been laid before and approved by a resolution of the House of Commons.
- (5) An instrument containing any other subordinate legislation under this Part is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Any power to make subordinate legislation under this Part includes power—
  - (a) to make different provision for different cases;
  - (b) to make provision for some cases only or subject to exceptions;
  - (c) to make provision generally or only in particular respects.
- (7) Any subordinate legislation under this Part may include—
  - (a) consequential, incidental or supplementary provision;
  - (b) transitional, transitory or saving provision.
- (8) In this section “subordinate legislation” means an Order in Council, an order or regulations.
- (9) In relation to any modification of a provision of, or made under, any of the provisions of the Nuclear Installations Act 1965 that are relevant statutory provisions, the power conferred by subsection (7)(a) includes power to extend the modification to Northern

Ireland for the purpose of ensuring that the text of the provision is uniform throughout the United Kingdom (but does not include power to alter the effect of the provision in relation to a site in Northern Ireland).

#### **114 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 Part.
- (2) The provision which may be made by virtue of subsection (1) includes, in particular—
  - (a) provision modifying any provision made by—
    - (i) primary legislation passed before the end of the session in which this Act was passed, or
    - (ii) an instrument made before the end of that session;
  - (b) provision for treating any regulations within subsection (3) as—
    - (i) relevant statutory provisions (or as relevant statutory provisions of a particular description),
    - (ii) regulations under section 85, or
    - (iii) regulations under section 101.
- (3) The regulations mentioned in subsection (2)(b) are regulations made under a provision within subsection (4) so far as they relate to, or to fees payable in respect of functions which relate to, any of the following purposes—
  - (a) the nuclear safety purposes;
  - (b) the nuclear security purposes;
  - (c) the nuclear safeguards purposes;
  - (d) the transport purposes.
- (4) The provisions mentioned in subsection (3) are—
  - (a) section 2(2) of the European Communities Act 1972 (general implementation of Treaties);
  - (b) section 14 of the 1974 Act (power to direct investigations and inquiries);
  - (c) section 15 of that Act (health and safety regulations);
  - (d) section 43 of that Act (fees);
  - (e) section 3 of the Nuclear Safeguards Act 2000 (identifying persons who have information);
  - (f) section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry).
- (5) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

#### **115 Transfer of staff etc**

Schedule 11 (which makes provision about schemes to transfer staff etc to the ONR) has effect.

#### **116 Minor and consequential amendments**

- (1) Schedule 12 (minor and consequential amendments related to Part 3) has effect.

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- (2) The Secretary of State may by order make such modifications of—
  - (a) primary legislation passed before the end of the session in which this Act is passed, or
  - (b) an instrument made before the end of that session,
 as the Secretary of State considers appropriate in consequence of this Part.
- (3) The power in subsection (2) includes power to make modifications of—
  - (a) paragraphs 17 to 30 of Schedule 12 (amendments of the Nuclear Installations Act 1965), or
  - (b) the provisions of the Nuclear Installations Act 1965 that are amended by those paragraphs.
- (4) The power conferred by virtue of subsection (3) is exercisable—
  - (a) before or after the date on which those paragraphs come into force, and
  - (b) only for the purpose of making provision corresponding to any amendments of the Nuclear Installations Act 1965 set out in an order made before that date (whether before or after this Act is passed) under section 76 of the Energy Act 2004 (amendments for giving effect to international obligations).

### 117 Application of Part 3

- (1) Her Majesty may by Order in Council provide that the provisions of this Part apply, so far as specified, in relation to persons, premises, activities, articles, substances or other matters, outside the United Kingdom as they apply within the United Kingdom or a specified part of the United Kingdom.
- (2) Such an Order in Council may—
  - (a) provide for any provisions of this Part to apply subject to modifications;
  - (b) provide for any of those provisions, as applied by the Order, to apply—
    - (i) in relation to individuals, whether or not they are British citizens, and
    - (ii) in relation to bodies corporate, whether or not they are incorporated under the law of a part of the United Kingdom;
  - (c) make provision for conferring jurisdiction on a specified court or courts of a specified description in respect of—
    - (i) offences under this Part committed outside the United Kingdom, or
    - (ii) causes of action under section 76 in respect of acts or omissions that occur outside the United Kingdom;
  - (d) make provision for questions arising out of any acts or omissions mentioned in paragraph (c)(ii) to be determined in accordance with the law in force in any specified part of the United Kingdom;
  - (e) exclude from the operation of section 3 of the Territorial Waters Jurisdiction Act 1878 (consents required for prosecutions) proceedings for offences under any provision of this Part committed outside the United Kingdom.
- (3) In this section “specified”, in relation to an Order in Council, means specified in the Order.
- (4) Nothing in this section affects the application outside the United Kingdom of any provision of, or made under, this Part which so applies otherwise than by virtue of an Order in Council under this section.

## **118 Review of Part 3**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the day on which section 77 comes into force, the Secretary of State must carry out a review of the provisions of this Part.
- (2) The Secretary of State must set out the conclusions of the review in a report.
- (3) The report must, in particular—
  - (a) set out the objectives of the provisions of this Part,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (4) The Secretary of State must lay the report before Parliament.

## **PART 4**

### **GOVERNMENT PIPE-LINE AND STORAGE SYSTEM**

## **119 Meaning of “government pipe-line and storage system”**

- (1) In this Part “the government pipe-line and storage system” means any property to which subsection (2), (3), (4) or (5) applies and which is vested in the Secretary of State, including any land held by the Secretary of State for the purposes of such property.
- (2) This subsection applies to any oil installations—
  - (a) which are government war works, within the meaning of the Requisitioned Land and War Works Act 1945, or
  - (b) to which section 28 of that Act applies by virtue of section 12(4) or (5) of the Requisitioned Land and War Works Act 1948.
- (3) This subsection applies to any oil installations which have been, are being or are intended to be, laid, installed or constructed, in or on land acquired for the purpose by virtue of section 13(a) of the 1958 Act.
- (4) This subsection applies to anything which has been, is being or is intended to be, laid, installed or constructed by virtue of a wayleave order under the 1958 Act.
- (5) This subsection applies to any other oil installations or other property—
  - (a) relating to oil installations to which subsection (2) or (3) applies, or
  - (b) relating to anything to which subsection (4) applies.
- (6) In this section—
  - “the 1958 Act” means the Land Powers (Defence) Act 1958;
  - “oil installations” has the meaning given by section 25(1) of that Act.

## **120 Rights in relation to the government pipe-line and storage system**

- (1) The Secretary of State may maintain and use the government pipe-line and storage system or any part of it for any purpose for which it is suitable.

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- (2) The Secretary of State may remove, replace or renew the system or any part of it.
- (3) The Secretary of State may restore land if the system or any part of it has been removed or abandoned.
- (4) The Secretary of State may inspect or survey the system, any part of it or any land on or under which the system or any part of it is situated.
- (5) The rights conferred by this section include in particular the right—
  - (a) to place, continue or renew markers for indicating the position of the system or any part of it in so far as it is placed under land;
  - (b) to erect and maintain stiles, gates, bridges or culverts for the facilitation of access to the system or any part of it;
  - (c) to construct works for the facilitation of maintenance or inspection, or protection from damage, of the system or any part of it;
  - (d) temporarily to place on land on or under which the system or any part of it is situated materials, plant or apparatus required in connection with the system or any part of it.

## **121 Right of entry**

- (1) For the purpose of exercising a right conferred by section 120, the Secretary of State may enter—
  - (a) any land on or under which is situated any part of the government pipe-line and storage system, or
  - (b) any land which is held with that land.
- (2) The right conferred by subsection (1) is a right to enter on foot or with vehicles and includes a right to transport materials, plant and apparatus.
- (3) For the purpose of accessing any land mentioned in subsection (1) (“the system land”), the Secretary of State may pass over any other land (“the access land”) so far as it is necessary to do so for that purpose.
- (4) But the right conferred by subsection (3) may be exercised only if, and to the extent that, the occupier or owner of the system land is entitled to exercise a corresponding right of access (whether by virtue of an easement, under an agreement or otherwise) to pass over the access land.
- (5) Except in an emergency the rights conferred by this section may be exercised only—
  - (a) at a reasonable time and with the consent of the occupier of the land, or
  - (b) under the authority of a warrant (see section 122).
- (6) “An emergency” means that urgent action is required to prevent or limit serious damage to health or to the environment.
- (7) The rights conferred by this section do not include a right to enter premises used wholly or mainly as a private dwelling house.



## **122 Warrants for the purposes of section 121**

- (1) A justice of the peace or, in Scotland, a sheriff, may issue a warrant to authorise entry on to land in the exercise of a right conferred by section 121 (including such a right exercisable by virtue of provision made by or under section 125).
- (2) The justice of the peace or the sheriff must be satisfied, on information on oath—
  - (a) that—
    - (i) at least 7 days’ notice of intention to apply for a warrant has been given to the occupier of the land,
    - (ii) the occupier cannot be found, or
    - (iii) urgent action is required to prevent or limit serious damage to health or to the environment,
  - (b) (except where the occupier cannot be found) that entry to the land has been or is likely to be refused, and
  - (c) that there are reasonable grounds for exercising the right.
- (3) A warrant under this section may authorise the use of reasonable force.
- (4) It is an offence for a person intentionally to obstruct the exercise of any right conferred by a warrant under this section; and a person guilty of such an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) In the application of this section to Scotland the reference to information on oath is to be read as a reference to evidence on oath.

## **123 Registration of rights**

- (1) In this section a “GPSS right” is a right conferred by section 120, 121 or 125(1).
- (2) A GPSS right in respect of any land—
  - (a) is not subject to any enactment requiring the registration or recording of interests in, charges over or other obligations affecting land;
  - (b) binds any person who is at any time the owner or occupier of the land.
- (3) But a GPSS right in respect of any land in England or Wales is a local land charge and subsection (2)(a) does not apply to subsection (2) of section 5 of the Local Land Charges Act 1975 (duty to register local land charge).
- (4) For the purposes of the operation in relation to a GPSS right of the duty under that subsection to register a local land charge, the Secretary of State is the originating authority.
- (5) A GPSS right in respect of any land in Scotland may be registered in the Land Register of Scotland or recorded in the Register of Sasines.

## **124 Compensation**

- (1) The Secretary of State must pay compensation to a person who proves that the value of a relevant interest to which the person is entitled is depreciated by reason of the coming into force of section 120, 121 or 125.
- (2) A “relevant interest” means an interest in land which—

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- (a) comprises, or is held with, land in respect of which a right conferred by section 120, 121 or 125 is exercisable, and
  - (b) subsisted at the time of the coming into force of the section.
- (3) The amount of compensation payable under subsection (1) is the amount that is equal to the amount of the depreciation.
- (4) If a person proves loss by reason of damage to, or disturbance in the enjoyment of, any land or chattels (or in Scotland corporeal moveables) as a result of the exercise of any right conferred by section 120 or 121, the person on whose behalf the right is exercised must pay compensation in respect of that loss.
- (5) Any dispute about entitlement to, or amount of, compensation under this section is to be determined by—
- (a) in the application of this Act to England and Wales, the Upper Tribunal;
  - (b) in the application of this Act to Scotland, the Lands Tribunal for Scotland.
- (6) In relation to the assessment of compensation under subsection (1)—
- (a) for the purposes of an interest in land in England and Wales and the application of section 5A of the Land Compensation Act 1961 (relevant valuation date) the “relevant valuation date” is the date on which the section concerned comes into force;
  - (b) for the purposes of an interest in land in Scotland and the operation of rule 2 in section 12 of the Land Compensation (Scotland) Act 1963 (value of land) the valuation must be made as at the date the section concerned comes into force.

## **125 Right to transfer the government pipe-line and storage system**

- (1) The Secretary of State may—
- (a) sell or lease the government pipe-line and storage system or any part of it;
  - (b) transfer for valuable consideration or otherwise the ownership of the system or any part of it;
  - (c) transfer for valuable consideration or otherwise any right relating to the system or any part of it (whether a right conferred by this Part or otherwise);
  - (d) transfer any liability relating to the system or any part of it.
- (2) Any sale, lease or transfer by virtue of subsection (1) may be subject to such conditions, if any, as the Secretary of State considers appropriate.

## **126 Application of the Pipe-lines Act 1962**

- (1) Subsection (3) applies in relation to any part of the government pipe-line and storage system which is for the time being owned otherwise than by the Secretary of State.
- (2) In subsection (1) “owned” is to be construed in accordance with the definition of “owner” in section 66(1) of the Pipe-lines Act 1962.
- (3) The following sections of that Act, namely—
- (a) section 10 (provisions for securing that a pipe-line is so used as to reduce necessity for construction of others),
  - (b) section 36 (notification of abandonment, cesser of use and resumption of use of pipe-lines or lengths thereof),

apply in relation to any such part as if it were a pipe-line constructed pursuant to a pipe-line construction authorisation.

- (4) Section 40(2) of that Act (application of the electronic communications code) applies—
- (a) for the purposes of GPSS works as it applies for the purposes of works in pursuance of a compulsory rights order,
  - (b) to a person executing GPSS works as it applies to a person authorised to execute works in pursuance of such an order.
- (5) In subsection (4) “GPSS works” means—
- (a) works for inspecting, maintaining, adjusting, repairing, altering or renewing the government pipe-line and storage system or any part of it;
  - (b) works for changing the position of the system or any part of it;
  - (c) works for removing the system or any part of it;
  - (d) breaking up or opening land for the purpose of works falling within paragraph (a), (b) or (c), or tunnelling or boring for that purpose;
  - (e) other works incidental to anything falling within paragraph (a), (b), (c) or (d).
- (6) To the extent that anything done under or by virtue of this Part constitutes the execution of pipe-line works for the purposes of section 45 of the Pipe-lines Act 1962 (obligation to restore agricultural land), subsection (3) of that section has effect as if after “this Act” there were inserted “or any provision of Part 4 of the Energy Act 2013”.

## **127 Rights apart from Part 4**

- (1) Nothing in this Part affects any other rights of the Secretary of State in relation to the government pipe-line and storage system (whether conferred under another enactment, by agreement or otherwise, and whether or not existing upon the coming into force of this section).
- (2) For the purposes of sections 120, 121 and 125, it is immaterial whether a right corresponding to a right conferred by the section was exercisable by the Secretary of State before the coming into force of the section.

## **128 Repeals**

- (1) The provisions mentioned in subsection (2) cease to have effect.
- (2) The provisions are—
- (a) section 12 of the Requisitioned Land and War Works Act 1948 (permanent power to maintain government oil pipe-lines);
  - (b) section 13 of that Act (compensation in respect of government oil pipe-lines);
  - (c) section 14 of that Act (registration of rights as to government oil pipe-lines);
  - (d) section 15 of that Act (supplementary provisions as to government oil pipe-lines);
  - (e) section 12 of the Land Powers (Defence) Act 1958 (extension of provisions of Requisitioned Land and War Works Acts).

## **129 Power to dissolve the Oil and Pipelines Agency by order**

- (1) The Secretary of State may provide by order for—

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- (a) the repeal of the Oil and Pipelines Act 1985;
  - (b) the dissolution of the Oil and Pipelines Agency.
- (2) If the Oil and Pipelines Agency is dissolved under subsection (1), the Secretary of State may make one or more schemes for the transfer to the Secretary of State of property, rights and liabilities (a “transfer scheme”).
- (3) Schedule 13 makes further provision about any transfer scheme under subsection (2).
- (4) An order under this section may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (5) An order under this section is to be made by statutory instrument which is subject to annulment in pursuance of a resolution of either House of Parliament.

### **130 Crown application: Part 4**

- (1) This Part binds the Crown.
- (2) No contravention by the Crown of section 122(4) makes the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) But subsection (2) does not affect the criminal liability of persons in the service of the Crown.

## **PART 5**

### STRATEGY AND POLICY STATEMENT

### **131 Designation of statement**

- (1) The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Part if the requirements set out in section 135 are satisfied (consultation and Parliamentary procedural requirements).
- (2) The strategy and policy statement is a statement prepared by the Secretary of State that sets out—
- (a) the strategic priorities, and other main considerations, of Her Majesty’s government in formulating its energy policy for Great Britain (“strategic priorities”),
  - (b) the particular outcomes to be achieved as a result of the implementation of that policy (“policy outcomes”), and
  - (c) the roles and responsibilities of persons (whether the Secretary of State, the Authority or other persons) who are involved in implementing that policy or who have other functions that are affected by it.

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- (3) The Secretary of State must publish the strategy and policy statement (including any amended statement following a review under section 134) in such manner as the Secretary of State considers appropriate.
- (4) For the purposes of this section, energy policy “for Great Britain” includes such policy for—
  - (a) the territorial sea adjacent to Great Britain, and
  - (b) areas designated under section 1(7) of the Continental Shelf Act 1964.
- (5) In this Part—
  - “the 1986 Act” means the Gas Act 1986;
  - “policy outcomes” has the meaning given in subsection (2)(b);
  - “strategic priorities” has the meaning given in subsection (2)(a);
  - “the strategy and policy statement” means the statement for the time being designated under subsection (1) as the strategy and policy statement for the purposes of this Part.

### **132 Duties in relation to statement**

- (1) The Authority must have regard to the strategic priorities set out in the strategy and policy statement when carrying out regulatory functions.
- (2) The Secretary of State and the Authority must carry out their respective regulatory functions in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the delivery of the policy outcomes.
- (3) Subsection (2) is subject to the application of the principal objective duty in the carrying out of any such function.
- (4) “Regulatory functions”, in relation to the Secretary of State, means—
  - (a) functions of the Secretary of State under Part 1 of the 1986 Act or Part 1 of EA 1989;
  - (b) other functions of the Secretary of State to which the principal objective duty is applied by any enactment.
- (5) “Regulatory functions”, in relation to the Authority, means—
  - (a) functions of the Authority under Part 1 of the 1986 Act or Part 1 of EA 1989;
  - (b) other functions of the Authority to which the principal objective duty is applied by any enactment.
- (6) The “principal objective duty” means the duty of the Secretary of State or the Authority (as the case may be) imposed by—
  - (a) section 4AA(1B) and (1C) of the 1986 Act;
  - (b) section 3A(1B) and (1C) of EA 1989.
- (7) The Authority must give notice to the Secretary of State if at any time the Authority concludes that a policy outcome contained in the strategy and policy statement is not realistically achievable.
- (8) A notice under subsection (7) must include—
  - (a) the grounds on which the conclusion was reached;
  - (b) what (if anything) the Authority is doing, or proposes to do, for the purpose of furthering the delivery of the outcome so far as reasonably practicable.

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- (9) In this section “enactment” includes—
- (a) an enactment contained in this Act, and
  - (b) an enactment passed or made after the passing of this Act.

### **133 Exceptions from section 132 duties**

- (1) Section 132(1) and (2) do not apply in relation to functions of the Secretary of State under sections 36 to 37 of EA 1989.
- (2) Section 132(1) and (2) do not apply in relation to anything done by the Authority—
- (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 36A(3) of the 1986 Act or section 43(3) of EA 1989.
- (3) The duties imposed by section 132(1) and (2) do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).

### **134 Review**

- (1) The Secretary of State must review the strategy and policy statement if a period of 5 years has elapsed since the relevant time.
- (2) The “relevant time”, in relation to the strategy and policy statement, means—
- (a) the time when the statement was first designated under this Part, or
  - (b) if later, the time when a review of the statement under this section last took place.
- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5 year period.
- (4) The Secretary of State may review the strategy and policy statement at any other time if—
- (a) a Parliamentary general election has taken place since the relevant time,
  - (b) the Authority has given notice to the Secretary of State under section 132(7) since the relevant time,
  - (c) a significant change in the energy policy of Her Majesty’s government has occurred since the relevant time, or
  - (d) the Parliamentary approval requirement in relation to an amended statement was not met on the last review (see subsection (12)).
- (5) The Secretary of State may determine that a significant change in the government’s energy policy has occurred for the purposes of subsection (4)(c) only if—
- (a) the change was not anticipated at the relevant time, and
  - (b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way.
- (6) On a review under this section the Secretary of State may—
- (a) amend the statement (including by replacing the whole or part of the statement with new content),
  - (b) leave the statement as it is, or

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- (c) withdraw the statement’s designation as the strategy and policy statement.
- (7) The amendment of a statement under subsection (6)(a) has effect only if the Secretary of State designates under section 131 the amended statement as the strategy and policy statement (and the procedural requirements under section 135 apply in relation to any such designation).
- (8) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments made to the statement.
- (9) The designation of a statement as the strategy and policy statement ceases to have effect upon a subsequent designation of an amended statement as the strategy and policy statement in accordance with subsection (7).
- (10) The Secretary of State must consult the following persons before proceeding under subsection (6)(b) or (c)—
  - (a) the Authority,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (11) For the purposes of subsection (2)(b), a review of a statement takes place—
  - (a) in the case of a decision on the review to amend the statement under subsection (6)(a)—
    - (i) at the time when the amended statement is designated as the strategy and policy statement under section 131, or
    - (ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament for approval under section 135(7);
  - (b) in the case of a decision on the review to leave the statement as it is under subsection (6)(b), at the time when that decision is taken.
- (12) For the purposes of subsection (4)(d), the Parliamentary approval requirement in relation to an amended statement was not met on the last review if—
  - (a) on the last review of the strategy and policy statement to be held under this section, an amended statement was laid before Parliament for approval under section 135(7), but
  - (b) the amended statement was not designated because such approval was not given.

### **135 Procedural requirements**

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it as the strategy and policy statement.
- (2) In this section references to a statement include references to a statement as amended following a review under section 134(6)(a).
- (3) The Secretary of State must first—
  - (a) prepare a draft of the statement, and
  - (b) issue the draft to the required consultees for the purpose of consulting them about it.

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- (4) The “required consultees” are—
  - (a) the Authority,
  - (b) the Scottish Ministers, and
  - (c) the Welsh Ministers.
- (5) The Secretary of State must then—
  - (a) make such revisions to the draft as the Secretary of State considers appropriate as a result of responses to the consultation under subsection (3)(b), and
  - (b) issue the revised draft for the purposes of further consultation about it to the required consultees and to such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must then—
  - (a) make any further revisions to the draft that the Secretary of State considers appropriate as a result of responses to the consultation under subsection (5)(b), and
  - (b) prepare a report summarising those responses and the changes (if any) that the Secretary of State has made to the draft as a result.
- (7) The Secretary of State must lay before Parliament—
  - (a) the statement as revised under subsection (6)(a), and
  - (b) the report prepared under subsection (6)(b).
- (8) The statement as laid under subsection (7)(a) must have been approved by a resolution of each House of Parliament before the Secretary of State may designate it as the strategy and policy statement under section 131.
- (9) The requirement under subsection (3)(a) to prepare a draft of a statement may be satisfied by preparation carried out before, as well as preparation carried out after, the passing of this Act.

### **136 Principal objective and general duties in preparation of statement**

- (1) Sections 4AA to 4B of the 1986 Act (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Part as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (2) Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to the relevant function of the Secretary of State under this Part as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (3) The “relevant function” is the Secretary of State’s function of determining the policy outcomes to be set out in the strategy and policy statement (whether when the statement is first prepared under this Part or when it is reviewed under section 134).

### **137 Reporting requirements**

- (1) The Utilities Act 2000 is amended as follows.
- (2) After section 4 insert—



#### **“4A Information in relation to strategy and policy statement**

- (1) As soon as reasonably practicable after the designation of a statement as the strategy and policy statement, the Authority must publish a document setting out the required information in relation to the statement.
- (2) The Authority must include the required information in relation to a strategy and policy statement in the forward work programme for each financial year, subject to making such modifications to the information as the Authority considers appropriate from the version as last published under this subsection.
- (3) The required information in relation to a strategy and policy statement to be set out in a document or forward work programme is—
  - (a) the strategy the Authority intends to adopt for the purpose of furthering the delivery of the policy outcomes contained in the statement (both in respect of the year in or for which the document or programme is issued and beyond);
  - (b) the things the Authority proposes to do in implementing that strategy (including when the Authority proposes to do them);
  - (c) the ways in which the Authority has had regard to the strategic priorities contained in the statement in setting out the information required under paragraphs (a) and (b).
- (4) The duty under subsection (1) does not apply if—
  - (a) the Authority does not think it reasonably practicable to publish the document mentioned in that subsection before the time when the Authority is next required to publish a forward work programme, and
  - (b) the Authority includes the required information in that forward work programme.
- (5) The duty under subsection (2) does not apply in relation to the first financial year beginning after the designation of the statement if—
  - (a) the Authority does not think it reasonably practicable to include the required information in the forward work programme for that year, and
  - (b) the Authority includes the required information in a document published under subsection (1).
- (6) The duty under subsection (2) does not apply in relation to a financial year if the Secretary of State gives notice to the Authority under this subsection that the statement’s designation—
  - (a) will be withdrawn before the beginning of the year, or
  - (b) is expected to have been withdrawn before the beginning of the year.
- (7) Subsections (4) to (6) of section 4 (notice requirements) apply to a document published under subsection (1) as they apply to a forward work programme.
- (8) In this section—

“designation”, in relation to a strategy and policy statement, means designation of the statement by the Secretary of State under Part 5 of the Energy Act 2013;

“forward work programme” has the meaning given by section 4(1);

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“policy outcomes”, “strategic priorities” and “strategy and policy statement” have the same meaning as in Part 5 of the Energy Act 2013.”

(3) In section 5 (annual and other reports of Authority), after subsection (2) insert—

“(2A) The annual report for each year shall also include a report on—

- (a) the ways in which the Authority has carried out its duties under section 132(1) and (2) of the Energy Act 2013 in relation to the strategy and policy statement (so far as the statement’s designation was in effect during the whole or any part of the year), and
- (b) the extent to which the Authority has done the things set out under section 4A in a forward work programme or other document as the things the Authority proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the statement (see subsection (3)(b) of that section).

(2B) The report mentioned in subsection (2A) must, in particular, include—

- (a) the Authority’s assessment of how the carrying out of its functions during the year has contributed to the delivery of the policy outcomes contained in the strategy and policy statement, and
- (b) if the Authority has failed to do any of the things mentioned in subsection (2A)(b), an explanation for the failure and the actions the Authority proposes to take to remedy it.

(2C) In subsections (2A) and (2B)—

“forward work programme” has the meaning given by section 4(1);  
“policy outcomes” and “strategy and policy statement” have the same meaning as in Part 5 of the Energy Act 2013.”

### **138 Consequential provision**

(1) The following provisions are repealed (guidance about the making by the Authority of a contribution towards the attainment of social or environmental policies)—

- (a) sections 4AB and 4B(1) of the 1986 Act, and
- (b) sections 3B and 3D(1) of EA 1989.

(2) In section 4AA(5) of the 1986 Act, after “(2),” insert “and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)”.

(3) In section 3A(5) of EA 1989, after “(2),” insert “and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)”.

(4) In the 1986 Act—

- (a) in section 4AA(7), for “sections 4AB and 4A” substitute “section 4A”;
- (b) in section 7B(4), in paragraph (a) omit “, 4AB”;
- (c) in section 23D(2)—
  - (i) at the end of paragraph (b) omit “and”;
  - (ii) in paragraph (c) for “sections 4AB and” substitute “section”, and

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- (iii) at the end of paragraph (c) insert “; and
    - (d) in the performance of its duties under section 132(1) and (2) of the Energy Act 2013.”;
  - (d) in section 28(5), in paragraph (a) omit “, 4AB”;
  - (e) in section 38(1A), omit “, 4AB”;
  - (f) in section 41E(6)—
    - (i) omit paragraph (b), and
    - (ii) at the end of paragraph (c) insert “; and
    - (d) any statement for the time being designated as the strategy and policy statement for the purposes of Part 5 of the Energy Act 2013.”
- (5) In EA 1989—
- (a) in section 3A(7), for “sections 3B and 3C” substitute “section 3C”;
  - (b) in section 11E(2)—
    - (i) at the end of paragraph (b) omit “and”,
    - (ii) in paragraph (c) for “sections 3B and 3C” substitute “section 3C”, and
    - (iii) at the end of paragraph (c) insert “; and
    - (d) in the performance of its duties under section 132(1) and (2) of the Energy Act 2013.”;
  - (c) in section 28(2A), omit “, 3B”;
  - (d) in section 56C(6)—
    - (i) omit paragraph (b), and
    - (ii) at the end of paragraph (c) insert “; and
    - (d) any statement for the time being designated as the strategy and policy statement for the purposes of Part 5 of the Energy Act 2013.”

## PART 6

### CONSUMER PROTECTION AND MISCELLANEOUS

#### CHAPTER 1

##### CONSUMER PROTECTION

###### *Domestic tariffs*

### **139 Power to modify energy supply licences: domestic supply contracts**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8 of that Act;
  - (c) a condition of a particular licence under section 6(1)(d) of EA 1989 (supply licences);

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- (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
- by making provision of any of the kinds specified in subsection (2).
- (2) The kinds of provision mentioned in subsection (1) are—
- (a) provision requiring a licence holder to adopt one or more standard domestic tariffs;
  - (b) provision for restricting the number of domestic tariffs, or domestic tariffs of a particular category, a licence holder may adopt;
  - (c) provision about discretionary terms (which may in particular require the same discretionary terms to be offered in connection with, or incorporated into, all domestic supply contracts of any particular category);
  - (d) provision for requiring a licence holder to provide information about its domestic tariffs and other supply contract terms, which may include information for enabling or facilitating the comparison—
    - (i) of different domestic tariffs or supply contract terms of the licence holder;
    - (ii) of domestic tariffs and supply contract terms of different licence holders;
  - (e) provision for requiring a licence holder to change the domestic tariff on which it supplies gas or electricity to a domestic customer who is on a closed tariff by—
    - (i) switching to a different domestic tariff for the time being offered by the licence holder, unless the customer objects, or
    - (ii) offering the customer, or inviting the customer to switch to, a different domestic tariff for the time being offered by the licence holder;
  - (f) provision for requiring a licence holder to provide information to domestic customers about the licence holder's costs, or profit, attributable to its domestic supply contracts, which may, in particular, include information about—
    - (i) particular kinds of those costs, and
    - (ii) the extent to which domestic customers' costs are attributable to any of those kinds of costs, or to profit.
- (3) Any limit imposed by virtue of subsection (2)(b) on the number of tariffs, or tariffs of any category, that a licence holder may adopt must be greater than the number of standard domestic tariffs, or (as the case may be) standard domestic tariffs of that category, that the licence holder is required to adopt.
- (4) Provision that may be included in a licence by virtue of subsection (2)(d) may in particular require a licence holder to provide each domestic customer with information—
- (a) about the customer's existing domestic tariff and supply contract terms;
  - (b) about the expected cost to the customer of supplies under the customer's existing domestic supply contract and on one or more other domestic tariffs (including the lowest domestic tariff for the customer) or other supply contract terms of the licence holder;
  - (c) about how to switch to different supply contract terms.
- (5) Provision that may be included in a licence by virtue of subsection (2)(d) or (f) may in particular—

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- (a) require information to be provided in a form that is clear and easy to understand;
  - (b) make provision about the times at which information is to be provided;
  - (c) make provision about the format in which information is to be provided, which may in particular require information about a domestic tariff or supply contract terms to be provided in the form of a single figure or set of figures;
  - (d) make provision about the way in which information is to be provided, which may in particular require information to be provided—
    - (i) by means of a code or otherwise using a format readable by an electronic device, or
    - (ii) in a way which facilitates processing of the information by means of an electronic device.
- (6) Provision included in a licence by virtue of the power in subsection (1)—
- (a) may make provision for determining when a licence holder is, or is not, to be regarded as offering to supply gas or electricity on a particular tariff (or as offering other terms in connection with domestic supply contracts) for the purpose of a relevant provision;
  - (b) may make provision for supplies (or proposed supplies) of gas or electricity to be regarded as being on the same tariff or different tariffs for the purpose of a relevant provision;
  - (c) may make provision for specifying how any domestic tariff (including a licence holder's lowest domestic tariff for a customer), or other supply contract terms, is or are to be identified for the purpose of any relevant provision;
  - (d) may make provision about the calculation or estimation of any amount or figure for the purpose of a relevant provision, which may, in particular, include provision—
    - (i) about assumptions to be made;
    - (ii) requiring information about a customer's circumstances or previous consumption of gas or electricity to be taken into account;
  - (e) may confer functions on the Secretary of State or the Authority;
  - (f) may make different provision for different kinds of domestic customers or different supply contract terms, or otherwise in relation to different cases;
  - (g) may make provision generally or only in relation to specified categories of domestic customers, domestic tariffs or domestic supply contracts or otherwise only in relation to specified cases or subject to exceptions;
  - (h) need not relate to the activities authorised by the licence;
  - (i) may do any of the things authorised for licences of that type by section 7B(5) (a), (6) or (7) of the Gas Act 1986 or section 7(3), (4), (5) or (6A) of EA 1989.
- (7) The power in 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, supplementary or consequential modifications.
- (8) In this section—

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- “closed tariff” means a domestic tariff on which a licence holder—
- (a) supplies gas or electricity to customers under existing domestic supply contracts, but
  - (b) no longer offers to supply gas or electricity to customers who are not already on the tariff;
- “discretionary terms”, in relation to a domestic supply contract (or proposed domestic supply contract), means the supply contract terms other than the principal terms;
- “domestic customer” means a customer under a domestic supply contract;
- “domestic supply contract” means a contract for the supply of gas or electricity at domestic premises wholly or mainly for domestic purposes;
- “domestic tariff” means the set of principal terms of a domestic supply contract (or proposed domestic supply contract);
- “modify” includes amend, add to or remove, and references to modifications are to be construed accordingly;
- “the principal terms”, in relation to a domestic supply contract, means the terms of the contract of the types specified in an order under subsection (11);
- “relevant provision” means any provision included in a licence by virtue of subsection (1);
- “standard domestic tariff” means a domestic tariff some or all of whose terms are specified by, or in accordance with, a relevant provision;
- “supply contract terms” means the terms and conditions of a domestic supply contract.
- (9) For the purposes of the definition of “standard domestic tariff”, the terms that may be specified by, or in accordance with, a relevant provision—
    - (a) may include a term providing for a charge or rate to be fixed for a period to be determined by the licence holder, but
    - (b) may not include any term setting the amount of a charge or rate or otherwise specifying how it is to be determined.
  - (10) For the purposes of this section—
    - (a) gas or electricity is supplied on a tariff if the supply is made under a contract whose principal terms are the terms of the tariff,
    - (b) a domestic customer is on a particular domestic tariff if gas or electricity is supplied to the customer on that tariff, and
    - (c) a licence holder adopts a tariff if it supplies or offers to supply gas or electricity on that tariff (and references to adopting a tariff include references to doing either or both of them).
  - (11) The Secretary of State may by order specify types of terms of domestic supply contracts which are the principal terms of such contracts.
  - (12) An order under subsection (11) may—
    - (a) include incidental, supplementary and consequential provision;
    - (b) make transitory or transitional provision or savings;
    - (c) make different provision for different domestic supply contracts or otherwise for different purposes;
    - (d) make provision subject to exceptions.
  - (13) An order under subsection (11) is to be made by statutory instrument.

- (14) A statutory instrument containing an order under subsection (11) is subject to annulment in pursuance of an order of either House of Parliament.

#### **140 Section 139: procedure etc**

- (1) Before making modifications of a licence under section 139(1) 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 it appropriate to consult.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) Before making modifications under section 139(1) 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) 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).
- (8) 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.
- (9) The Secretary of State must publish details of any modifications made under section 139(1) as soon as reasonably practicable after they are made.
- (10) Where the Secretary of State makes a modification of the standard conditions of a licence of any type, 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.
- (11) A modification of part of a standard condition of a particular 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 or Part 1 of EA 1989.
- (12) The power in section 139(1) may not be exercised after 31 December 2018.

#### **141 General duties of Secretary of State**

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 139 or 140 of this Act

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with respect to holders of licences under section 7A(1) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

- (2) Sections 3A to 3D of EA 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 139 or 140 of this Act with respect to holders of licences under section 6(1)(d) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

## **142 Consequential provision**

- (1) The Utilities Act 2000 is amended as follows.
- (2) In section 33 (standard conditions of electricity licences), in subsection (1)(f), omit “76 or”.
- (3) In section 81 (standard conditions of gas licences), in subsection (2), for “or under Chapter 1 of Part 1 or section 76 or 98 of the Energy Act 2011” substitute “, under Chapter 1 of Part 1 or section 98 of the Energy Act 2011 or under section 139 of the Energy Act 2013”.
- (4) In the Energy Act 2011, sections 76 to 78 (power to modify energy supply licences: information about tariffs) are repealed.

### *Licensable activities*

## **143 Powers to alter activities requiring licence: activities related to supply contracts**

- (1) In section 41C of the Gas Act 1986 (power to alter activities requiring licence), after subsection (4) insert—
- “(4A) For the purposes of subsection (4), activities connected with the supply of gas include the following activities, whether or not carried on by a person supplying gas—
- (a) giving advice, information or assistance in relation to contracts for the supply of gas to persons who are or may become customers under such contracts, and
- (b) the provision of any other services to such persons in connection with such contracts.”
- (2) In section 56A of EA 1989 (power to alter activities requiring licence), after subsection (4) insert—
- “(4A) For the purposes of subsection (4), activities connected with the supply of electricity include the following activities, whether or not carried on by a person supplying electricity—
- (a) giving advice, information or assistance in relation to contracts for the supply of electricity to persons who are or may become customers under such contracts, and
- (b) providing any other services to such persons in connection with such contracts.”



### *Consumer redress orders*

#### **144 Consumer redress orders**

Schedule 14 (which enables the Authority to impose requirements on a regulated person to take remedial action in respect of loss, damage or inconvenience caused to consumers of gas or electricity) has effect.

### *Fuel poverty*

#### **145 Fuel poverty**

- (1) The Warm Homes and Energy Conservation Act 2000 is amended as follows.
- (2) After section 1 insert—

##### **“1A Objective for addressing fuel poverty: England**

- (1) The Secretary of State must make regulations setting out an objective for addressing the situation of persons in England who live in fuel poverty.
- (2) The regulations must specify a target date for achieving the objective.
- (3) Regulations under this section must be made by statutory instrument; and a statutory instrument containing such regulations may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (4) The Secretary of State must lay a draft of the instrument before each House of Parliament within 6 months of the day on which section 145 of the Energy Act 2013 comes into force.

##### **1B Strategy relating to fuel poverty: England**

- (1) The Secretary of State must prepare and publish a strategy setting out the Secretary of State’s policies for achieving the objective set out in regulations under section 1A by the target date specified in the regulations.
- (2) The strategy must be published within 6 months of the day on which the first regulations under section 1A come into force.
- (3) The strategy must—
  - (a) describe the households to which it applies,
  - (b) specify a comprehensive package of measures for achieving the objective by the target date, and
  - (c) specify interim objectives to be achieved and target dates for achieving them.
- (4) The Secretary of State must take such steps as are in the Secretary of State’s opinion necessary to implement the strategy.
- (5) The Secretary of State must—

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- (a) from time to time assess the impact of steps taken under subsection (4) and the progress made in achieving the objectives and meeting the target dates,
  - (b) make any revision of the strategy which the Secretary of State thinks appropriate in consequence of the assessment,
  - (c) from time to time publish reports on such assessments.
- (6) If—
- (a) further regulations under section 1A are made revising an objective or the target date for achieving it, and
  - (b) the Secretary of State considers that changes to the strategy are necessary or desirable as a result of those regulations,
- the Secretary of State must revise the strategy within 6 months of the day on which those regulations come into force.
- (7) If the Secretary of State revises the strategy, the Secretary of State must publish the strategy as revised.
- (8) In preparing the strategy or any revision of the strategy, the Secretary of State must consult—
- (a) local authorities or associations of local authorities,
  - (b) persons appearing to the Secretary of State to represent the interests of persons living in fuel poverty,
  - (c) the Gas and Electricity Markets Authority, and
  - (d) such other persons as the Secretary of State thinks fit.”
- (3) In section 2—
- (a) in the title, after “**poverty**” insert “: **Wales**”;
  - (b) in subsection (1), after “strategy” insert “as respects Wales”;
  - (c) in subsection (2)(d), omit “England or”;
  - (d) in subsection (8)—
    - (i) in the definition of “the appropriate authority”, omit paragraph (a), and
    - (ii) in the definition of “the relevant commencement”, omit paragraph (a).

## CHAPTER 2

### MISCELLANEOUS

#### *Feed-in tariffs*

#### 146 **Feed-in tariffs: increase in maximum capacity of plant**

In section 41 of the Energy Act 2008 (power to amend licence conditions etc: feed-in tariffs), in subsection (4), in the definition of “specified maximum capacity” for “5” substitute “10”.

### *Offshore transmission*

#### **147 Offshore transmission systems**

- (1) EA 1989 is amended as follows.
- (2) In section 4 (prohibition on unlicensed supply), after subsection (3A) insert—

“(3AA) Subsection (3A) is subject to section 6F (offshore transmission during commissioning period).”
- (3) After section 6E insert—

#### **“6F Offshore transmission during commissioning period**

- (1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.
- (2) The first condition is that the transmission takes place over an offshore transmission system (“the system”) or anything forming part of it.
- (3) The second condition is that the transmission takes place during a commissioning period (see section 6G).
- (4) The third condition is that—
  - (a) a request has been made to the Authority in accordance with the tender regulations for a tender exercise to be held for the granting of an offshore transmission licence in respect of the system,
  - (b) the Authority has determined in accordance with those regulations that the request relates to a qualifying project, and
  - (c) the system, or anything forming part of it, has not been transferred as a result of the exercise to the successful bidder.
- (5) The fourth condition is that—
  - (a) the person who is the developer in relation to the tender exercise is also the operator of a relevant generating station, and
  - (b) the construction or installation of the system is being or has been carried out by or on behalf of, or by or on behalf of a combination of, any of the following—
    - (i) the person mentioned in paragraph (a);
    - (ii) a body corporate associated with that person at any time during the period of construction or installation;
    - (iii) a previous developer;
    - (iv) a body corporate associated with a previous developer at any time during the period of construction or installation.
- (6) For the purposes of subsection (1), it does not matter whether or not the person mentioned in that subsection is the developer in relation to the tender exercise.
- (7) For the purposes of subsection (5)(b)(iii) and (iv), a person is a “previous developer” in relation to the system if—
  - (a) the person does not fall within subsection (5)(a), but
  - (b) at any time during the period of construction or installation, the person was the developer in relation to the tender exercise.

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(8) In this section—

“associated”, in relation to a body corporate, is to be construed in accordance with paragraph 37 of Schedule 2A;

“developer”, in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request, including any person who is to be so treated by virtue of section 6D(4));

“offshore transmission” has the meaning given by section 6C(6);

“offshore transmission licence” has the meaning given by section 6C(5);

“offshore transmission system” means a transmission system used for purposes connected with offshore transmission;

“operator”, in relation to a generating station, means the person who is authorised to generate electricity from that station—

(a) by a generation licence granted under section 6(1)(a), or

(b) in accordance with an exemption granted under section 5(1);

“qualifying project” is to be construed in accordance with the tender regulations;

“successful bidder” and “tender exercise” have the same meanings as in section 6D;

“relevant generating station”, in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

“the tender regulations” means regulations made under section 6C.

#### **6G Section 6F: meaning of “commissioning period”**

(1) For the purposes of section 6F(3), transmission over an offshore transmission system (or anything forming part of it) takes place during a “commissioning period” if it takes place at any time—

(a) before a completion notice is given in respect of the system, or

(b) during the period of 18 months beginning with the day on which such a notice is given.

(2) A “completion notice”, in relation to a transmission system, is a notice which—

(a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and

(b) 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.

(3) The Secretary of State may by order amend subsection (1) so as to specify a period of 12 months in place of the period of 18 months.

(4) An order under subsection (3) may be made only so as to come into force during the period—

(a) beginning 2 years after the day on which section 147 of the Energy Act 2013 comes into force, and

(b) ending 5 years after that day.

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- (5) An amendment made by an order under subsection (3) does not apply in relation to any transmission of electricity over a transmission system if—
- (a) but for the making of the order, the person participating in the transmission would, by virtue of section 6F, have been regarded as not participating in the transmission, and
  - (b) the determination mentioned in subsection (4)(b) of that section in relation to the system was made on or before the day on which the order is made.

- (6) In this section—
- “co-ordination licence” has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);
  - “relevant co-ordination licence-holder” has the meaning given by paragraph 13(4) of Schedule 2A.

#### **6H Sections 6F and 6G: modification of codes or agreements**

- (1) The Authority may—
    - (a) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence;
    - (b) modify an agreement that gives effect to a code so maintained.
  - (2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of implementing or facilitating the operation of section 6F or 6G.
  - (3) The power to make modifications under subsection (1) includes a power to make incidental, supplemental, consequential or transitional modifications.
  - (4) The Authority must consult such persons as the Authority considers appropriate before making a modification under subsection (1).
  - (5) Subsection (4) may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
  - (6) As soon as reasonably practicable after making a modification under subsection (1), the Authority must publish a notice stating its reasons for making it.
  - (7) A notice under subsection (6) is to be published in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by it.
  - (8) A modification under subsection (1) may not be made after the end of the period of 7 years beginning with the day on which section 147 of the Energy Act 2013 comes into force.”
- (4) In section 64 (interpretation of Part 1), in subsection (1B) at the end insert “and section 6F”.

### *Fees*

#### **148 Fees for services provided for energy resilience purposes**

- (1) The Secretary of State may require fees to be paid for services or facilities provided or made available by the Secretary of State in the exercise of energy resilience powers.
- (2) “Energy resilience powers” are any powers exercised by the Secretary of State for the purposes of, or in connection with, preventing or minimising disruption to the energy sector in Great Britain (including disruption to the supply of fuel in Great Britain).
- (3) The amount of any fee charged under this section is—
  - (a) such amount as may be specified in, or determined by or in accordance with, regulations made by the Secretary of State, or
  - (b) if no such regulations are made, an amount specified in, or determined by or in accordance with, a direction given by the Secretary of State for the purposes of this section.
- (4) Regulations or a direction under this section may provide for the amounts of fees to be different in different cases and, in particular, for fees in respect of the exercise of the same power to be of different amounts in different circumstances.
- (5) Regulations under subsection (3)(a) must be made by statutory instrument and any such instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The Secretary of State must lay before Parliament a statement of any fees specified in, or determined by or in accordance with, a direction given under subsection (3)(b).

#### **149 Fees in respect of decommissioning and clean-up of nuclear sites**

- (1) Chapter 1 of Part 3 of the Energy Act 2008 (nuclear sites: decommissioning and clean-up) is amended as follows.
- (2) After section 45 (duty to submit funded decommissioning programme) insert—

##### **“45A Costs incurred in considering proposed programmes**

- (1) A person who informs the Secretary of State of a proposal to submit a funded decommissioning programme under section 45 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 (2), at a time determined in accordance with such regulations.
- (2) The costs are those incurred by the Secretary of State in relation to the consideration of the proposed programme (or any particular aspect of it), including, in particular, the costs of obtaining advice in relation to it.”
- (3) In section 46 (approval of programme), after subsection (3G) insert—
  - “(3H) Where the Secretary of State makes or amends an agreement under subsection (3A), or it is proposed that such an agreement be made or amended, 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 of the

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costs mentioned in subsection (3I), at a time determined in accordance with such regulations.

(3I) The costs are those incurred by the Secretary of State in relation to the consideration of the agreement or amendment, including, in particular, the costs of obtaining advice in relation to the agreement or amendment.”

(4) In section 49 (procedure for modifying approved programme)—

- (a) in subsection (3), after “made,” insert “or advice is sought from the Secretary of State about the making of a proposal,”, and
- (b) in subsection (4), in the opening words after “proposal” insert “(or the making of a proposal)”.

(5) In section 66 (disposal of hazardous material), after subsection (3) insert—

“(3A) The Secretary of State may make regulations providing for a person who makes a proposal to the Secretary of State to enter an agreement of the kind mentioned in subsection (1), or proposes an amendment to such an agreement, to pay a fee to the Secretary of State in respect of the costs incurred in relation to the consideration of the proposal, including, in particular, the costs of obtaining advice in relation to it.

(3B) The regulations may, in particular, make provision about—

- (a) when the fee is to be paid;
- (b) how the amount of the fee is to be determined.”

#### *Smoke and carbon monoxide alarms*

### **150 Smoke and carbon monoxide alarms**

(1) The Secretary of State may by regulations make provision imposing duties on a relevant landlord of residential premises in England for the purposes of ensuring that, during any period when the premises are occupied under a tenancy—

- (a) the premises are equipped with a required alarm (or required alarms), and
- (b) checks are made by or on behalf of the landlord in accordance with the regulations to ensure that any such alarm remains in proper working order.

(2) “Required alarm” means—

- (a) a smoke alarm, or
- (b) a carbon monoxide alarm,

that meets the appropriate standard.

(3) Regulations may include provision about—

- (a) the interpretation of terms used in subsections (1) and (2);
- (b) the enforcement of any duty imposed by regulations.

(4) Provision made by virtue of subsection (3)(b) may in particular—

- (a) confer functions on local housing authorities in England;
- (b) require a landlord who contravenes any such duty to pay a financial penalty.

(5) Provision about penalties made by virtue of subsection (4)(b) includes provision—

- (a) about the procedure to be followed in imposing penalties;
- (b) about the amount of penalties;

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- (c) conferring rights of appeal against penalties;
  - (d) for the enforcement of penalties;
  - (e) about the application of sums paid by way of penalties (and such provision may permit or require the payment of sums into the Consolidated Fund).
- (6) Regulations may—
- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (7) Consequential provision made by virtue of subsection (6)(a) may amend, repeal or revoke any provision made by or under an Act.
- (8) Regulations are to be made by statutory instrument.
- (9) An instrument containing regulations may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (10) Subject to provision contained in regulations, in this section—
- “the appropriate standard”, in relation to a smoke alarm or a carbon monoxide alarm, means the standard (if any) that is specified in, or determined under, regulations;
  - “local housing authority” has the meaning given in section 261(2) of the Housing Act 2004;
  - “premises” includes land, buildings, moveable structures, vehicles and vessels;
  - “regulations” means regulations under this section;
  - “relevant landlord” means a landlord in respect of a tenancy of residential premises in England who is of a description specified in regulations;
  - “residential premises” means premises all or part of which comprise a dwelling;
  - “tenancy” includes any lease, licence, sub-lease or sub-tenancy (and “landlord” is to be read accordingly).

### *Review*

#### **151 Review of certain provisions of Part 6**

- (1) As soon as reasonably practicable after the end of the period of 5 years beginning with the relevant commencement date, the Secretary of State must carry out a review of—
- (a) section 144 and Schedule 14 (consumer redress orders);
  - (b) section 149 (fees in respect of decommissioning etc).
- (2) The relevant commencement date—
- (a) in relation to section 144 and Schedule 14, is the date on which that section and Schedule come into force;
  - (b) in relation to section 149, is the date on which that section comes into force.
- (3) The Secretary of State must set out the conclusions of the review in a report.



- (4) The report must, in particular—
  - (a) set out the objectives of the provisions subject to review,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (5) The Secretary of State must lay the report before Parliament.

## PART 7

### FINAL

#### 152 Interpretation of Act

- (1) In this Act—
  - “the Authority” means the Gas and Electricity Markets Authority;
  - “EA 1989” means the Electricity Act 1989;
  - “functions” includes powers and duties;
  - “primary legislation” means—
    - (a) an Act of Parliament,
    - (b) an Act of the Scottish Parliament,
    - (c) an Act or Measure of the National Assembly for Wales, or
    - (d) Northern Ireland legislation.
- (2) A reference in this Act to—
  - (a) the Department of Enterprise, Trade and Investment, or
  - (b) the Department of Environment,is to that Department in Northern Ireland.

#### 153 Transfer schemes

- (1) This section applies in relation to a scheme made by the Secretary of State under any of the following provisions (a “transfer scheme”)—
  - (a) Schedule 1;
  - (b) paragraph 16 of Schedule 2;
  - (c) Schedule 3;
  - (d) Schedule 11;
  - (e) Schedule 13.
- (2) Subject to subsection (3), the Secretary of State may modify a transfer scheme.
- (3) If a transfer under the scheme has taken effect, any modification under subsection (2) that relates to the transfer may be made only with the agreement of the person (or persons) affected by the modification.
- (4) A modification takes effect from such date as the Secretary of State may specify; and that date may be the date when the original scheme came into effect.
- (5) A transfer scheme may—

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- (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes;
  - (d) make provision subject to exceptions.
- (6) In the provisions mentioned in subsection (1), “subordinate legislation” means—
- (a) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
  - (b) an instrument made under—
    - (i) an Act of the Scottish Parliament,
    - (ii) an Act or Measure of the National Assembly for Wales, or
    - (iii) Northern Ireland legislation.

#### **154 Financial provisions**

- (1) 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 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.
- (2) The expenditure referred to in subsection (1)(a) includes expenditure incurred by the Secretary of State for the purposes of, or in connection with—
- (a) the establishment of a CFD counterparty;
  - (b) making payments or providing financial assistance to a CFD counterparty;
  - (c) obtaining advice and assistance in relation to the exercise of functions conferred on the Secretary of State by or by virtue of Chapter 2 or 3 of Part 2;
  - (d) making payments or providing financial assistance to a settlement body in relation to capacity agreements (see section 28(4)(g));
  - (e) making payments or providing financial assistance to the national system operator, a person or body on whom a function is conferred by virtue of section 35 or an alternative delivery body in connection with the exercise of EMR functions.
- (3) Financial assistance or payments includes financial assistance or payments given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State; and such conditions may in particular in the case of a grant include conditions for repayment in specified circumstances.
- (4) In this section—
- “alternative delivery body” and “EMR functions” have the same meaning as in section 46;
  - “CFD counterparty” and “national system operator” have the same meaning as in Chapter 2 of Part 2;
  - “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.

## 155 Extent

- (1) Subject to the rest of this section, this Act extends to England and Wales and Scotland.
- (2) The following also extend to Northern Ireland—
  - (a) Part 1 (decarbonisation);
  - (b) in Part 2—
    - (i) Chapter 1 (general considerations),
    - (ii) Chapter 2 (contracts for difference),
    - (iii) Chapter 4 (investment contracts),
    - (iv) section 56 (transition to certificate purchase scheme),
    - (v) Chapter 8 (emissions performance standard), and
    - (vi) section 63 (exemption from liability in damages);
  - (c) subject to subsections (6) and (7), Part 3 (nuclear regulation);
  - (d) this Part.
- (3) Section 55(4) extends to Northern Ireland only.
- (4) Sections 145 and 150 extend to England and Wales only.
- (5) Section 149 extends to England and Wales and Northern Ireland only.
- (6) Part 2 of Schedule 8 extends to England and Wales and Scotland only.
- (7) The amendments made by Schedule 12 have the same extent as the provisions they amend, except that—
  - (a) paragraph 25 (amendment to section 24A of the Nuclear Installations Act 1965 as it has effect in England and Wales and Scotland) extends to England and Wales and Scotland only;
  - (b) the other amendments in that Schedule of the Nuclear Installations Act 1965 extend to England and Wales, Scotland and Northern Ireland only;
  - (c) paragraphs 39 to 49 (amendments of the Nuclear Safeguards and Electricity (Finance) Act 1978 and Nuclear Safeguards Act 2000) extend to England and Wales, Scotland and Northern Ireland only;
  - (d) paragraphs 66 to 68 (amendments of the Radioactive Substances Act 1993) extend to Scotland only.

## 156 Commencement

- (1) The provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) and (3).
- (2) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
  - (a) Chapter 5 of Part 2 (conflicts of interest and contingency arrangements);
  - (b) Chapter 6 of Part 2 (access to markets);
  - (c) section 56 (transition to certificate purchase scheme);
  - (d) Chapter 8 of Part 2 (emissions performance standard);
  - (e) Part 5 (strategy and policy statement), other than section 138(1), (4) and (5);
  - (f) sections 139 to 142 (domestic tariffs: modifications of energy supply licences);

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- (g) section 143 (powers to alter activities requiring licences: activities related to supply contracts);
  - (h) section 144 (consumer redress orders);
  - (i) section 145 (fuel poverty);
  - (j) section 146 (feed-in tariffs: increase in maximum capacity of plant);
  - (k) section 147 (offshore transmission systems);
  - (l) section 149 (fees in respect of decommissioning and clean-up of nuclear sites).
- (3) The following provisions come into force on the day on which this Act is passed—
- (a) Part 1 (decarbonisation);
  - (b) Chapter 1 of Part 2 (general considerations);
  - (c) Chapter 2 of Part 2 (contracts for difference);
  - (d) Chapter 3 of Part 2 (capacity market);
  - (e) Chapter 4 of Part 2 (investment contracts);
  - (f) section 55 (closure of support under the renewables obligation);
  - (g) Chapter 9 of Part 2 (miscellaneous);
  - (h) section 113 (subordinate legislation under Part 3);
  - (i) section 114(1) (power to make transitional provision in relation to Part 3);
  - (j) section 115 (transfer of staff etc for purposes of Part 3);
  - (k) section 116(2) (power to make consequential amendments in relation to Part 3);
  - (l) section 118 (review of Part 3);
  - (m) section 151 (review of certain provisions of Part 6);
  - (n) the provisions of this Part (including this section).
- (4) An order under subsection (1) may—
- (a) appoint different days for different purposes;
  - (b) make transitional provision and savings.

## 157 Short title

This Act may be cited as the Energy Act 2013.