



Infrastructure Act 2015

2015 CHAPTER 7

PART 6

ENERGY

The community electricity right

38 The community electricity right

- (1) The Secretary of State may make regulations which give individuals resident in a community or groups connected with a community (or both) the right to buy a stake in a renewable electricity generation facility that is located—
 - (a) in the community (if it is a land-based facility), or
 - (b) adjacent to the community (if it is an offshore facility).
- (2) The Secretary of State may make regulations about—
 - (a) the kind, or kinds, of body which may be a facility operator,
 - (b) ownership of facility operators, and
 - (c) matters relating to the ownership of facility operators (including the rights, duties and powers arising from ownership),if the Secretary of State considers that the regulations are appropriate in connection with the right to buy.
- (3) The Secretary of State may make regulations about the supply of information in connection with the following—
 - (a) the right to buy;
 - (b) ownership of stakes in qualifying facilities (including the transfer of ownership);
 - (c) operation of qualifying facilities;
 - (d) ownership of facility operators (including matters relating to the ownership of facility operators);
 - (e) monitoring and assessing—

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- (i) the operation of the right to buy, and
 - (ii) the ownership of stakes in qualifying facilities.
- (4) The Secretary of State may make regulations about the enforcement of obligations imposed by regulations made under any of subsections (1) to (3); and the regulations about enforcement may include—
- (a) provision for obligations to be enforceable as, or as if they were, generation licence conditions or relevant requirements;
 - (b) a power to impose financial penalties for breach of obligations.
- (5) The Secretary of State may by regulations modify—
- (a) any generation licence condition, or
 - (b) any generation licence exemption,
- if the Secretary of State considers that the modification is appropriate in connection with regulations made under any of subsections (1) to (4) or this subsection.
- (6) Schedule 6 (which describes certain provision that community electricity right regulations can make, including provision about renewable electricity generation facilities, communities, and individuals and groups who may exercise the right to buy) has effect.
- (7) In this section, Schedule 6 and section 39—
- “community electricity right regulations” means regulations under this section;
 - “electricity generation licence” means a licence granted under section 6(1) (a) of the Electricity Act 1989;
 - “facility operator” means a person who generates, or is expected to generate, electricity at a qualifying facility for the purpose of giving a supply to any premises or enabling a supply to be so given;
 - “generation licence condition” means—
 - (a) the conditions of a particular electricity generation licence, or
 - (b) the standard conditions so far as they are incorporated in electricity generation licences by virtue of section 8A of the Electricity Act 1989;
 - “generation licence exemption” means an exemption from section 4(1)(a) of the Electricity Act 1989 granted under section 5(1) of that Act;
 - “land-based facility” means a renewable electricity generation facility that is not an offshore facility;
 - “offshore facility” means a renewable electricity generation facility that is located in waters in or adjacent to Great Britain that are beyond the mean low water mark;
 - “qualifying facility” means a renewable electricity generation facility in relation to which the right to buy is to be, is, or has been, exercisable;
 - “relevant requirement” has the same meaning as in section 25 of the Electricity Act 1989;
 - “renewable electricity generation facility” means a facility using a renewable source of energy to generate electricity (and here “renewable source” has the same meaning as in sections 32 to 32LB of the Electricity Act 1989 — see section 32M of that Act) which is located in—
 - (a) Great Britain,

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- (b) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea adjacent to Great Britain, but do not form part of that territorial sea,
 - (c) the territorial sea adjacent to Great Britain, or
 - (d) the Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004), except for any part of that Zone which forms part of the territorial sea adjacent to Northern Ireland;
- “right to buy” means the right to buy a stake in a renewable electricity generation facility that is given by regulations under subsection (1).

Commencement Information

II S. 38 in force at 1.6.2016, see s. 57(7)(a)

39 Supplementary provision

- (1) Community electricity right regulations may confer a function on—
 - (a) the Secretary of State, or
 - (b) any other person, apart from the Scottish Ministers or the Welsh Ministers.
- (2) The functions that may be imposed include—
 - (a) a duty (including a restriction or prohibition);
 - (b) a function involving the exercise of a discretion;
 - (c) a requirement to consult;
 - (d) a requirement to take account of guidance.
- (3) The provisions of section 38, Schedule 6 and this section which specify particular kinds of provision that may be made in community electricity right regulations do not limit the powers conferred by section 38 to make such regulations.
- (4) The duties under Schedule 6 to make particular provision in community electricity right regulations do not apply unless the Secretary of State decides to exercise the power conferred by section 38 to make such regulations.
- (5) Provision which commences community electricity right regulations may be framed so as to secure that the regulations do not apply to a renewable electricity generation facility if development of the facility has reached a stage of advancement specified in the commencement provision.
- (6) A reference in section 38 or Schedule 6 to buying a stake in a renewable electricity generation facility includes a reference to making a loan in relation to a renewable electricity generation facility.
- (7) The Secretary of State must carry out a review of section 38, Schedule 6 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force.

Commencement Information

I2 S. 39 in force at 1.6.2016, see s. 57(7)(a)

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The Extractive Industries Transparency Initiative

40 The Extractive Industries Transparency Initiative

After section 8 of the Commissioners for Revenue and Customs Act 2005 insert—

“8A The Extractive Industries Transparency Initiative

- (1) The Commissioners may do anything which they think necessary or expedient in connection with the Extractive Industries Transparency Initiative in so far as it relates to taxes the collection and management of which is the responsibility of the Commissioners.
- (2) In this section “the Extractive Industries Transparency Initiative” means the international initiative of that name which has the aim of promoting openness in the management of revenues from natural resources.”

Commencement Information

I3 S. 40 in force at 12.4.2015, see s. 57(7)(b)

Recovery of UK petroleum

41 Maximising economic recovery of UK petroleum

After section 9 of the Petroleum Act 1998 insert—

“PART 1A

MAXIMISING ECONOMIC RECOVERY OF UK PETROLEUM

9A The principal objective and the strategy

- (1) In this Part the “principal objective” is the objective of maximising the economic recovery of UK petroleum, in particular through—
 - (a) development, construction, deployment and use of equipment used in the petroleum industry (including upstream petroleum infrastructure), and
 - (b) collaboration among the following persons—
 - (i) holders of petroleum licences;
 - (ii) operators under petroleum licences;
 - (iii) owners of upstream petroleum infrastructure;
 - (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure.
- (2) The Secretary of State must produce one or more strategies for enabling the principal objective to be met.
- (3) A strategy may relate to matters other than those mentioned in subsection (1) (a) and (b).

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- (4) For provision about producing and revising a strategy, see sections 9F and 9G.

9B Exercise of certain functions of the Secretary of State

The Secretary of State must act in accordance with the current strategy or strategies when—

- (a) exercising functions under the other Parts of this Act (except Part 4),
- (b) exercising functions under Part 4 to the extent that they concern reduction of the costs of abandonment of offshore installations and submarine pipelines,
- (c) exercising functions under Chapter 3 of Part 2 of the Energy Act 2011 (upstream petroleum infrastructure),
- (d) exercising any function or using any power under a petroleum licence, and
- (e) exercising any other function or using any power—
 - (i) to provide advice or assistance to another person, or
 - (ii) to acquire, use or supply information,for the purpose of enabling the principal objective to be met.

9C Carrying out of certain petroleum industry activities

- (1) A person who is the holder of a petroleum licence must act in accordance with the current strategy or strategies when planning and carrying out activities as the licence holder.
- (2) A person who is an operator under a petroleum licence must act in accordance with the current strategy or strategies when planning and carrying out activities as the operator under the licence.
- (3) A person who is the owner of upstream petroleum infrastructure must act in accordance with the current strategy or strategies when planning and carrying out the person's activities as the owner of upstream petroleum infrastructure (including the development, construction, deployment and use of the infrastructure).
- (4) A person must act in accordance with the current strategy or strategies when planning and carrying out the commissioning of upstream petroleum infrastructure.

9D Reports by the Secretary of State

- (1) As soon as practicable after the end of each reporting period, the Secretary of State must—
 - (a) consider the extent to which, during that period, these persons have followed section 9C by acting in accordance with the current strategy or strategies—
 - (i) licence holders,
 - (ii) operators under petroleum licences,
 - (iii) owners of upstream petroleum infrastructure, and

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- (iv) persons planning and carrying out the commissioning of upstream petroleum infrastructure; and
- (b) produce a report on the results of the consideration of that question.
- (2) The report may contain other material, including a statement of action which the Secretary of State has taken, or is proposing to take, in response to any matter included in the report (including changes to a strategy).
- (3) The Secretary of State must publish, and lay before each House of Parliament, a copy of each report produced under this section.
- (4) In this section “reporting period” means—
 - (a) the period of two years beginning with the day when this section comes into force, and
 - (b) each subsequent period of one year beginning with the day after the end of a previous reporting period.

9E Secretary of State's security and resilience functions

- (1) This Part does not limit the exercise of the Secretary of State's security and resilience functions.
- (2) This Part is subject to the exercise of the security and resilience functions by the Secretary of State.
- (3) In this section “security and resilience function” means any function which relates to—
 - (a) the security of petroleum supplies, or
 - (b) the resilience of the petroleum industry.

9F Producing and revising a strategy

- (1) The Secretary of State must produce the first strategy before the end of the period of one year beginning with the day on which this section comes into force.
- (2) The Secretary of State may subsequently—
 - (a) produce a new strategy, or
 - (b) revise a current strategy,
 whenever the Secretary of State thinks appropriate.
- (3) The Secretary of State must review each current strategy before the end of each relevant four year period.
- (4) In reviewing a current strategy, the Secretary of State must (in particular) take account of the results of any consideration undertaken under section 9D in respect of reporting periods falling within the relevant four year period.
- (5) In this section “relevant four year period”, in relation to a current strategy, means a period of four years beginning with—
 - (a) the date on which the strategy was issued, or
 - (b) if later, the date on which the last review under subsection (3) was concluded.

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9G Procedure for producing and revising a strategy

- (1) Before—
 - (a) producing the first strategy,
 - (b) producing a new strategy, or
 - (c) revising a current strategy,the Secretary of State must prepare a draft of the strategy or revised strategy.
- (2) The Secretary of State must—
 - (a) consult such persons as the Secretary of State thinks appropriate about the draft, and
 - (b) consider any representations made by them.
- (3) If, after complying with that duty, the Secretary of State decides to proceed with the draft (in its original form or with modifications), the Secretary of State must lay a copy of the draft before each House of Parliament.
- (4) The Secretary of State may not take any further steps in relation to the draft if, within the 40 day period, either House resolves not to approve the draft (a “negative resolution”).
- (5) If neither House passes a negative resolution, the Secretary of State may issue the strategy or revised strategy in the form laid before Parliament.
- (6) The strategy or revised strategy comes into force on the date specified by the Secretary of State (which must not be before the date when it is issued).
- (7) Subsection (4) does not prevent a new draft of a strategy or revised strategy from being laid before Parliament.
- (8) In this section “40 day period”, in relation to the draft of a strategy or revised strategy, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or if the draft is not laid before each House on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40 day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.

9H “Upstream petroleum infrastructure” and its owners

- (1) In this Part “upstream petroleum infrastructure” means—
 - (a) a gas processing facility,
 - (b) an oil processing facility, or
 - (c) an upstream petroleum pipeline,if and in so far as it meets conditions A and B.
- (2) A facility or pipeline meets condition A if and in so far as it is situated in Great Britain or relevant UK waters.
- (3) A facility or pipeline meets condition B if and in so far as it is used in relation to UK petroleum (including such petroleum after it has been got).

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- (4) But an upstream petroleum pipeline is not “upstream petroleum infrastructure” if it is a pipeline to which section 17GA applies (petroleum pipelines subject to Norwegian access system).
- (5) In this section, the following expressions have the same meanings as in Chapter 3 of Part 2 of the Energy Act 2011 (see section 90 of that Act)—
- (a) “gas processing facility”;
 - (b) “oil processing facility”;
 - (c) “upstream petroleum pipeline”.
- (6) In this Part, “owner”, in relation to upstream petroleum infrastructure, means—
- (a) a person in whom the pipeline or facility is vested;
 - (b) a lessee and any person occupying or controlling the pipeline or facility; and
 - (c) a person who has the right to have things conveyed by the pipeline or processed by the facility.

9I Other interpretation

In this Part—

“current strategy”, in relation to any particular time, means a strategy under section 9A(2) in force at that time;

“operator under a petroleum licence” means a person who is responsible for organising or supervising any of the operations of searching for, boring for, or getting UK petroleum in pursuance of the petroleum licence;

“owner”, in relation to upstream petroleum infrastructure, has the meaning given in section 9H;

“petroleum” has meaning given in section 1;

“petroleum licence” means a licence granted under—

- (a) section 3 of this Act, or
- (b) section 2 of the Petroleum (Production) Act 1934;

“principal objective” has the meaning given in section 9A;

“relevant UK waters” means—

- (a) the territorial sea adjacent to the United Kingdom, and
- (b) the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;

“UK petroleum” means petroleum which for the time being exists in its natural condition in strata beneath relevant UK waters;

“upstream petroleum infrastructure” has the meaning given in section 9H.”

Commencement Information

I4 S. 41 in force at 12.4.2015 by S.I. 2015/481, reg. 3(b)

Status: Point in time view as at 06/04/2017.

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F1 42 Levy on holders of certain energy industry licences

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Textual Amendments

- F1** S. 42 omitted (1.10.2016) by virtue of [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 74](#); S.I. 2016/920, reg. 2(a)

Petroleum and geothermal energy in deep-level land

43 Petroleum and geothermal energy: right to use deep-level land

- (1) A person has the right to use deep-level land in any way for the purposes of exploiting petroleum or deep geothermal energy.
- (2) Land is subject to the right of use (whether for the purposes of exploiting petroleum or deep geothermal energy) only if it is—
 - (a) deep-level land, and
 - (b) within a landward area.
- (3) But that does not prevent deep-level land that is within a landward area from being used for the purposes of exploiting petroleum or deep geothermal energy outside a landward area.
- (4) Deep-level land is any land at a depth of at least 300 metres below surface level.

Commencement Information

- I5** S. 43 in force at 12.4.2015, see s. 57(7)(b)

44 Further provision about the right of use

- (1) The ways in which the right of use may be exercised include—
 - (a) drilling, boring, fracturing or otherwise altering deep-level land;
 - (b) installing infrastructure in deep-level land;
 - (c) keeping, using or removing any infrastructure installed in deep-level land;
 - (d) passing any substance through, or putting any substance into, deep-level land or infrastructure installed in deep-level land;
 - (e) keeping, using or removing any substance put into deep-level land or into infrastructure installed in deep-level land.
- (2) The purposes for which the right of use may be exercised include—
 - (a) searching for petroleum or deep geothermal energy;
 - (b) assessing the feasibility of exploiting petroleum or deep geothermal energy;
 - (c) preparing for exploiting petroleum or deep geothermal energy;
 - (d) decommissioning, and other activity which falls to be continued or undertaken, in consequence of activities undertaken for the purposes of exploiting petroleum or deep geothermal energy.

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- (3) The right of use includes the right to leave deep-level land in a different condition from the condition it was in before an exercise of the right of use (including by leaving any infrastructure or substance in the land).
- (4) The right of use—
 - (a) does not give a person (“R”) any power which is greater than, or different from, the power which R would have had if the right had been granted by a person legally entitled to grant it; and
 - (b) does not relieve a person (“R”) from any obligation or liability to which R would have been subject if the right had been granted by a person legally entitled to grant it.
- (5) A person (“L”) who owns land (the “relevant land”) is not liable, as the owner of that land, in tort for any loss or damage which is attributable to the exercise, or proposed exercise, of the right of use by another person (whether in relation to the relevant land or any other land).
- (6) For that purpose, loss or damage is not attributable to the exercise, or proposed exercise, of the right of use (in particular) if, or to the extent that, the loss or damage is attributable to a deliberate omission by L.
- (7) There is a “deliberate omission by L” if L, as owner of the relevant land, decides—
 - (a) not to do an act, or
 - (b) not to allow another person to do an act,
 and the circumstances at the time of that decision were such that L would not have had to bear any of the costs incurred (whether by L or any other person) in doing or allowing the act.
- (8) Section 43 and this section bind the Crown.

Commencement Information

I6 S. 44 in force at 12.4.2015, see s. 57(7)(b)

45 Payment scheme

- (1) The Secretary of State may, by regulations, require relevant energy undertakings to make payments in respect of the proposed exercise, or exercise, of the right of use.
- (2) The regulations may require payments to be made—
 - (a) to owners of relevant land or interests in relevant land;
 - (b) to other persons for the benefit of areas in which relevant land is situated.
- (3) The regulations may—
 - (a) specify the amount or amounts of payments;
 - (b) make provision for determining the amount or amounts of payments.
- (4) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about—
 - (a) the proposed exercise, or exercise, of the right of use;
 - (b) the making of payments in accordance with regulations under this section.

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- (5) Before making any regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.

Commencement Information

I7 S. 45 in force at 12.4.2015, see s. 57(7)(b)

46 Notice scheme

- (1) The Secretary of State may, by regulations, require relevant energy undertakings to give notice of the proposed exercise, or exercise, of the right of use.
- (2) The regulations may require relevant energy undertakings—
- (a) to give notice—
 - (i) to owners of relevant land or interests in relevant land;
 - (ii) to persons of other specified descriptions;
 - (b) to display notice within the area in which relevant land is situated or elsewhere;
 - (c) to publish notice (otherwise than by displaying the notice).
- (3) The regulations may make provision about the information which the notice is to contain, including provision about information relating to—
- (a) any payment scheme regulations which are in force;
 - (b) the application of any payment scheme regulations to the proposed exercise, or exercise, of the right of use;
 - (c) the method for obtaining a payment under any payment scheme regulations.
- (4) The regulations may make provision about the manner in which notice is to be given, displayed or published, including provision requiring notice to be—
- (a) displayed at specified places or places of specified descriptions;
 - (b) published in specified publications or publications of specified descriptions.
- (5) The regulations may require relevant energy undertakings to provide the Secretary of State, or any other specified person, with specified information about—
- (a) the proposed exercise, or exercise, of the right of use;
 - (b) the giving of notice in accordance with regulations under this section.
- (6) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) In this section “payment scheme regulations” means regulations under section 45.

Commencement Information

I8 S. 46 in force at 12.4.2015, see s. 57(7)(b)

Status: Point in time view as at 06/04/2017.

Changes to legislation: There are currently no known outstanding effects for the Infrastructure Act 2015, PART 6. (See end of Document for details)

47 Payment and notice schemes: supplementary provision

- (1) Regulations under section 45 or 46 may make provision about the enforcement of relevant requirements, including provision for the imposition of financial penalties in respect of breach of relevant requirements.
- (2) Regulations under section 45 or 46 may confer a function on—
 - (a) the Secretary of State, or
 - (b) any other person, apart from the Welsh Ministers.
- (3) The functions that may be imposed include—
 - (a) a duty (including a restriction or prohibition);
 - (b) a function involving the exercise of a discretion;
 - (c) a requirement to consult.
- (4) The provisions of sections 45 and 46 and this section which specify particular kinds of provision that may be made in regulations under section 45 or 46 do not limit the powers conferred by that section to make such regulations.
- (5) The Secretary of State must carry out a review of sections 45 and 46 and the preceding provisions of this section as soon as reasonably practicable after the end of the period of 5 years beginning with the day on which they come into force.
- (6) The Secretary of State must by regulations—
 - (a) repeal section 45, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 45;
 - (b) repeal section 46, and make any consequential amendments (including repeals) of the other provisions of this Act that the Secretary of State considers appropriate, if the relevant conditions are met in relation to the power under section 46.
- (7) The relevant conditions are met in relation to the power under section 45 or the power under section 46 if—
 - (a) that power is not exercised within the period of 7 years beginning with the day on which that section comes into force, and
 - (b) the Secretary of State is satisfied that there is no convincing case for retaining that power.

Commencement Information

19 S. 47 in force at 12.4.2015, see s. 57(7)(b)

48 Interpretation

- (1) For the purposes of deciding whether land is deep-level land—
 - (a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and
 - (b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.
- (2) In sections 43 to 47 and this section—

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“deep geothermal energy” means geothermal energy in deep-level land (including in water or any other fluid in deep-level land);

“deep-level land” has the meaning given in section 43(4);

“landward area” means those parts of the landward area (within the meaning of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014) that are in England and Wales or are beneath waters (other than waters adjacent to Scotland);

“petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act);

“relevant energy undertaking” means a person who proposes to exercise, or exercises, the right of use;

“relevant land” means land in respect of which the right of use is proposed to be, or is, exercised;

“relevant requirement” means a requirement imposed by regulations under section 45 or 46;

“right of use” means the right conferred by section 43;

“specified” means specified in regulations under section 45 or 46;

“substance” includes electricity and any other intangible thing.

- (3) The power of the Secretary of State to make regulations under section 4 of the Petroleum Act 1998 includes power to make such amendments of the definition of “landward area” in subsection (2) above as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4 of the 1998 Act.

Commencement Information

I10 S. 48 in force at 12.4.2015, see s. 57(7)(b)

Other provision about onshore petroleum

49 Advice on likely impact of onshore petroleum on the carbon budget

- (1) The Secretary of State must from time to time request the Committee on Climate Change to provide advice (in accordance with section 38 of the CCA 2008) on the impact which combustion of, and fugitive emissions from, petroleum got through onshore activity is likely to have on the Secretary of State's ability to meet the duties imposed by—
- (a) section 1 of the CCA 2008 (net UK carbon account target for 2050), and
 - (b) section 4(1)(b) of the CCA 2008 (UK carbon account not to exceed carbon budget).
- (2) As soon as practicable after each reporting period, the Secretary of State must—
- (a) lay before Parliament a copy of advice received under subsection (1) during the reporting period, and
 - (b) lay before Parliament a draft of regulations under subsection (3) or a report under subsection (5).
- (3) Regulations under this subsection are regulations providing for section 43 to cease to have effect to such extent as may be specified in the regulations.

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- (4) No provision made in regulations under subsection (3) has effect in relation to anything done in exercise of the right of use conferred by section 43 before the date on which the regulations come into force.
- (5) A report under this subsection is a report explaining why a draft of regulations under subsection (3) has not been laid.
- (6) Regulations under this section may make such consequential amendments or repeals of sections 43 to 48 and this section as the Secretary of State considers appropriate.
- (7) In this section—
- “CCA 2008” means the Climate Change Act 2008;
- “petroleum got through onshore activity” means petroleum got from the strata in which it exists in its natural condition by activity carried out on land in England and Wales (excluding land covered by the sea or any tidal waters);
- “petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998 (see section 1 of that Act);
- “reporting period” means—
- (a) the period ending with 1 April 2016, and
- (b) each subsequent period of 5 years.

Commencement Information

III S. 49 in force at 12.4.2015, see s. 57(7)(b)

50 Onshore hydraulic fracturing: safeguards

After section 4 of the Petroleum Act 1998 insert—

“4A Onshore hydraulic fracturing: safeguards

- (1) The Secretary of State must not issue a well consent that is required by an onshore licence for England or Wales unless the well consent imposes—
- (a) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of less than 1000 metres; and
- (b) a condition which prohibits associated hydraulic fracturing from taking place in land at a depth of 1000 metres or more unless the licensee has the Secretary of State's consent for it to take place (a “hydraulic fracturing consent”).
- (2) A hydraulic fracturing consent is not to be issued unless an application for its issue is made by, or on behalf of, the licensee.
- (3) Where an application is made, the Secretary of State may not issue a hydraulic fracturing consent unless the Secretary of State—
- (a) is satisfied that—
- (i) the conditions in column 1 of the following table are met, and
- (ii) the conditions in subsection (6) are met, and
- (b) is otherwise satisfied that it is appropriate to issue the consent.

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(4) The existence of a document of the kind mentioned in column 2 of the table in this section is sufficient for the Secretary of State to be satisfied that the condition to which that document relates is met.

(5) But the absence of such a document does not prevent the Secretary of State from being satisfied that that condition is met.

Column 1: conditions	Column 2: documents
1 The environmental impact of the development which includes the relevant well has been taken into account by the local planning authority	A notice given by the local planning authority that the environmental information was taken into account in deciding to grant the relevant planning permission
2 Appropriate arrangements have been made for the independent inspection of the integrity of the relevant well	A certificate given by the Health and Safety Executive that it— (a) has received a well notification under regulation 6 of the Borehole Sites and Operations Regulations 1995, (b) has received the information required by regulation 19 of the Offshore Installations and Wells (Design and Construction, etc.) Regulations 1996, and (c) has visited the site of the relevant well
3 The level of methane in groundwater has, or will have, been monitored in the period of 12 months before the associated hydraulic fracturing begins	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires compliance with a waste management plan which provides for monitoring of the level of methane in groundwater in the period of 12 months before the associated hydraulic fracturing begins
4 Appropriate arrangements have been made for the monitoring of emissions of methane into the air	An environmental permit which contains a condition requiring compliance with a waste management plan which provides for the monitoring of emissions of methane into the air for the period of the permit
5 The associated hydraulic fracturing will not take place within protected groundwater source areas	A decision document given by the relevant environmental regulator (in connection with an environmental permit) which indicates that the associated hydraulic fracturing will not take place within protected groundwater source areas
6 The associated hydraulic fracturing will not take place within other protected areas	A notice given by the local planning authority that the area in respect of which the relevant planning permission has been granted does not include any

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	land which is within any other protected areas
7	In considering an application for the relevant planning permission, the local planning authority has (where material) taken into account the cumulative effects of— (a) that application, and (b) other applications relating to exploitation of onshore petroleum obtainable by hydraulic fracturing
	A notice given by the local planning authority that it has taken into account those cumulative effects
8	The substances used, or expected to be used, in associated hydraulic fracturing — (a) are approved, or (b) are subject to approval, by the relevant environmental regulator
	An environmental permit has been given by the relevant environmental regulator which contains a condition that requires substances used in associated hydraulic fracturing to be approved by that regulator
9	In considering an application for the relevant planning permission, the local planning authority has considered whether to impose a restoration condition in relation to that development
	A notice given by the local planning authority that it has considered whether to impose such a condition
10	The relevant undertaker has been consulted before grant of the relevant planning permission
	A notice given by the local planning authority that the relevant undertaker has been consulted
11	The public was given notice of the application for the relevant planning permission
	A notice given by the local planning authority which confirms that the applicant for the relevant planning permission has certified that public notification requirements, as set out in a development order, have been met

- (6) The conditions mentioned in subsection (3)(a)(ii) are—
- (a) that appropriate arrangements have been made for the publication of the results of the monitoring referred to in condition 4 in the table;
 - (b) that a scheme is in place to provide financial or other benefit for the local area.
- (7) A hydraulic fracturing consent may be issued subject to any conditions which the Secretary of State thinks appropriate.
- (8) A breach of such a condition is to be treated as if it were a breach of a condition of a well consent.

4B Section 4A: supplementary provision

- (1) “Associated hydraulic fracturing” means hydraulic fracturing of shale or strata encased in shale which—
- (a) is carried out in connection with the use of the relevant well to search or bore for or get petroleum, and
 - (b) involves, or is expected to involve, the injection of—

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- (i) more than 1,000 cubic metres of fluid at each stage, or expected stage, of the hydraulic fracturing, or
 - (ii) more than 10,000 cubic metres of fluid in total.
- (2) For the purposes of deciding the depth at which associated hydraulic fracturing is taking place in land—
 - (a) the depth of a point in land below surface level is the distance between that point and the surface of the land vertically above that point; and
 - (b) in determining what is the surface of the land, any building or other structure on the land, and any water covering the land, must be ignored.
- (3) Subsections (1) and (2) apply for the purposes of section 4A and this section.
- (4) The Secretary of State must, by regulations made by statutory instrument, specify—
 - (a) the descriptions of areas which are “protected groundwater source areas”, and
 - (b) the descriptions of areas which are “other protected areas”,for the purposes of section 4A.
- (5) A statutory instrument which contains regulations under subsection (4) 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) The Secretary of State must lay a draft of the first such regulations before each House of Parliament on or before 31 July 2015.
- (7) The Secretary of State must consult—
 - (a) the Environment Agency before making any regulations under subsection (4)(a) in relation to England;
 - (b) the Natural Resources Body for Wales before making any regulations under subsection (4)(a) in relation to Wales.
- (8) These expressions have the meanings given—
 - “development order” has the meaning given in section 59 of the Town and Country Planning Act 1990;
 - “environmental permit” means a permit granted under regulation 13 of the Environmental Permitting (England and Wales) Regulations 2010;
 - “hydraulic fracturing consent” has the meaning given in subsection (1)(b);
 - “licensee” means the holder of the onshore licence for England or Wales;
 - “local planning authority” means—
 - (a) the planning authority to which the application for the relevant planning permission was made (unless the Secretary of State or Welsh Ministers are responsible for determining the application),
 - or
 - (b) the Secretary of State or Welsh Ministers (if responsible for determining the application);
 - “onshore licence for England or Wales” means a licence granted under section 3 which authorises a person to search or bore for or get

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petroleum in those parts of the landward area (within the meaning of the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014) that are in England or Wales or are beneath waters (other than waters adjacent to Scotland);

“relevant environmental regulator” means—

- (a) the Environment Agency, if the relevant well is situated in England, or
- (b) the Natural Resources Body for Wales, if the relevant well is situated in Wales;

“relevant planning permission” means planning permission to be granted, or granted, in respect of development which includes the relevant well;

“relevant undertaker” means the water undertaker or sewerage undertaker in whose area of appointment the relevant well is located;

“relevant well” means the well to which a well consent relates;

“well consent” means a consent in writing of the Secretary of State to the commencement of drilling of a well.

- (9) The power of the Secretary of State to make regulations under section 4 includes power to make such amendments of the definition of “onshore licence for England or Wales” in this section as the Secretary of State considers appropriate in consequence of any other exercise of the power under section 4.
- (10) The Secretary of State may, by regulations made by statutory instrument—
 - (a) make such amendments of column 2 of the table in section 4A as the Secretary of State considers appropriate, and
 - (b) make such other amendments of section 4A or this section as the Secretary of State considers appropriate in consequence of provision made under paragraph (a).
- (11) A statutory instrument which contains regulations under subsection (10) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.”

Commencement Information

I12 S. 50 in force at 30.7.2015 for specified purposes by S.I. 2015/1576, reg. 2

I13 S. 50 in force at 6.4.2016 in so far as not already in force by S.I. 2016/455, reg. 2

Renewable heat incentives

51 Renewable heat incentives

(1) Section 100 of the Energy Act 2008 (renewable heat incentives) is amended in accordance with subsections (2) to (4).

(2) After subsection (1) insert—

“(1A) Regulations under this section may confer any function on any person.

(1B) Regulations under this section may provide for a function conferred on a person to be exercisable on behalf of another person.”

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- (3) In subsection (2)—
- (a) in paragraph (a), for the words before sub-paragraph (i) substitute—
 - “(a) make provision giving any of the following persons entitlements to payments (“RHI payments”) in specified circumstances—”;
 - (b) in paragraph (b), for “such payments” substitute “ RHI payments ”;
 - (c) after paragraph (b) insert—
 - “(ba) make provision about the circumstances in which, and descriptions of persons to whom, the whole or a part of an entitlement to an RHI payment may be assigned (whether the person has the entitlement by virtue of regulations under paragraph (a) or regulations under this paragraph);
 - (bb) authorise or require the Secretary of State, the Authority, designated fossil fuel suppliers, or any person with any other administration function, to make an RHI payment—
 - (i) to the person who is entitled to the payment by virtue of regulations under paragraph (a), or
 - (ii) where that entitlement has been wholly or partly assigned in accordance with regulations under this section, to the person or persons for the time being enjoying the entitlement or any part of it;”;
 - (d) in paragraph (c), for “such payments” substitute “ RHI payments ”;
 - (e) for paragraph (d) substitute—
 - “(d) authorise or require a person to provide specified information;”;
 - (f) in paragraph (e), omit “to the Secretary of State or the Authority”;
 - (g) in paragraph (h), omit “for the Secretary of State or the Authority”;
 - (h) omit paragraph (i);
 - (i) at the end insert—
 - “(j) authorise the Secretary of State to make payments to a person in respect of the exercise by the person of functions under regulations under this section;
 - (k) make provision about the resolution of disputes relating to the exercise of functions under regulations under this section, including provision about arbitration or appeals (which may, in particular, provide for the person conducting an arbitration or determining an appeal to order the payment of costs or compensation).”
- (4) In subsection (3), after the definition of “fossil fuel supplier” insert—
- ““other administration function” means a function relating to the administration of a scheme established under this section, other than a function conferred by regulations under subsection (2)(bb);”.
- (5) Section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation) is amended in accordance with subsections (6) to (8).
- (6) In subsection (2)—
- (a) in paragraph (a), omit sub-paragraph (vi);

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- (b) after paragraph (aa) insert—
- “(ab) regulations which contain (whether alone or together with other provision) affirmative resolution provision made under section 100 (renewable heat incentives);”.

(7) In subsection (3), after “(2)(a)” insert “, (ab) ”

(8) After subsection (3) insert—

“(3A) Provision made under section 100 is affirmative resolution provision if—

- (a) the provision is made under any of the powers which always attract the affirmative resolution procedure, or
- (b) the provision—
- (i) is not made under any of those powers, and
- (ii) meets condition A, B, C or D.

(3B) The powers which always attract the affirmative resolution procedure are the powers conferred by—

- (a) section 100(2)(c), (e), (f), (g), (h) and (k),
- (b) section 100(5), and
- (c) section 100(6).

(3C) Provision meets condition A if—

- (a) it is made under the power conferred by section 100(2)(bb), and
- (b) it requires a designated fossil fuel supplier to make a payment under an RHI scheme.

(3D) Provision meets condition B if—

- (a) it confers an administration function on a person who is not the Secretary of State or the Authority, and
- (b) the time when the provision comes into force will be the first time that an administration function under the RHI scheme concerned is exercisable by a person who is not the Secretary of State or the Authority.

(3E) Provision meets condition C if—

- (a) it is made under a power conferred by paragraph (ba) or (bb)(ii) of section 100(2),
- (b) it is made in relation to an RHI scheme that was in existence immediately before the coming into force of this subsection, and
- (c) it is the first provision to be made under that power in relation to that RHI scheme.

(3F) Provision meets condition D if—

- (a) it is made under a power conferred by paragraph (a), (b), (ba), (bb), (d) or (j) of section 100(2),
- (b) it is made in relation to an RHI scheme that was not in existence immediately before the coming into force of this subsection, and
- (c) it is the first provision to be made under that power in relation to that RHI scheme.

(3G) In deciding whether provision meets condition B, the following matters must be ignored—

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- (a) for the purposes of subsection (3D)(a): any provision which confers a payment function on designated fossil fuel suppliers;
 - (b) for the purposes of subsection (3D)(b): any payment function under the RHI scheme concerned which (before the time when the provision comes into force) is, or has been, exercisable by designated fossil fuel suppliers.
- (3H) The fact that provision is to some extent made under a power conferred by section 100(1), (1A) or (1B) does not prevent that provision from being taken (for the purposes of subsections (3A) to (3F)) as being made under any other power conferred by section 100.
- (3I) In subsections (3B) to (3H) and this subsection—
- “administration function” means a function relating to the administration of an RHI scheme;
 - “designated fossil fuel suppliers” has the same meaning as in section 100;
 - “payment function” means a function of making a payment under an RHI scheme (whether the function authorises or requires the making of the payment);
 - “RHI scheme” means a scheme under section 100 to facilitate and encourage renewable generation of heat.”
- (9) In section 105 of the Utilities Act 2000 (general restrictions on disclosure of information), in subsection (3)—
- (a) in paragraph (a), omit “or section 100”;
 - (b) after paragraph (a) insert—
 - “(aa) it is made for the purpose of facilitating any functions of any person under section 100 of the Energy Act 2008;”.

Reimbursement of persons who have met expenses

52 Reimbursement of persons who have met expenses of making electrical connections

- (1) The Electricity Act 1989 is amended in accordance with this section.
- (2) In section 19 (power to recover expenditure)—
 - (a) omit subsections (2) and (3);
 - (b) after subsection (3) insert—
 - “(3A) Schedule 5B (reimbursement of persons who have met expenses) has effect.”;
 - (c) in subsection (4), after “this section” insert “ and Schedule 5B ”.
- (3) After Schedule 5A insert—

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“SCHEDULE 5B

REIMBURSEMENT OF PERSONS WHO HAVE MET EXPENSES

Power to make regulations

- 1 (1) The Secretary of State may, by regulations, make provision entitling the relevant electricity distributor to exercise the reimbursement powers in cases where conditions A, B, C and D are met.
- (2) Condition A is met if any electric line or electrical plant is provided for the purpose of making a connection (the “first connection”)—
 - (a) between premises and a distribution system, or
 - (b) between two distribution systems.
- (3) Condition B is met if a payment in respect of first connection expenses is made by one or more of the following persons—
 - (a) a person requiring the first connection in pursuance of section 16(1);
 - (b) a person who otherwise causes the first connection to be made (including by means of contractual arrangements).
- (4) Condition C is met if any electric line or electric plant provided for the purpose of making the first connection is used for the purpose of making another connection (the “second connection”)—
 - (a) between premises and a distribution system, or
 - (b) between two distribution systems.
- (5) Condition D is met if the second connection is made within the prescribed period after the first connection was made.
- (6) “First connection expenses” are any expenses reasonably incurred by a person in providing any electric line or electric plant for the purpose of making the first connection.
- (7) It does not matter whether the first connection, or the second connection, is made by an electricity distributor or a person of another description.

The reimbursement powers

- 2 (1) The “reimbursement powers” are—
 - (a) the power to demand a reimbursement payment from—
 - (i) a person requiring the second connection in pursuance of section 16(1), or
 - (ii) a person who otherwise causes the second connection to be made (including by means of contractual arrangements); and
 - (b) the power to apply the reimbursement payment in making such payments as may be appropriate towards reimbursing any persons for any payments they were previously required to make in respect of first connection expenses (whether that requirement arose by virtue of paragraph (a) or otherwise).

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- (2) A “reimbursement payment” is a payment, of such amount as may be reasonable in all the circumstances, in respect of first connection expenses.

Other provision about regulations under this Schedule

- 3 (1) The Secretary of State must consult the Authority before making regulations under this Schedule.
- (2) Regulations under this Schedule may make provision requiring relevant electricity distributors to exercise a reimbursement power (whether in all cases or in cases provided for in the regulations).
- (3) Regulations under this Schedule may make provision for the relevant electricity distributor to establish or estimate the amount of first connection expenses — or an amount of any aspect of those expenses — in cases where that distributor is not the person who made the first connection.
- (4) Regulations under sub-paragraph (3) may not require any person to supply the relevant electricity distributor with information about any expenses incurred.
- (5) Regulations under sub-paragraph (3) may provide for an estimate of an amount of first connection expenses to be calculated by a relevant electricity distributor by reference only to a combination of—
- (a) expenses which that distributor would incur if that distributor were making the connection at the time of the estimate, and
 - (b) changes in prices since the time when the connection was actually made.

Interpretation

- 4 (1) In this Schedule—
- “first connection” has the meaning given in paragraph 1;
 - “first connection expenses” has the meaning given in paragraph 1;
 - “reimbursement payment” has the meaning given in paragraph 2;
 - “reimbursement powers” has the meaning given in paragraph 2;
 - “relevant electricity distributor”, in relation to the exercise of a reimbursement power, means—
- (a) in a case where the first connection was made between premises and a distribution system, the electricity distributor that (at the time of the exercise of the power) operates that distribution system;
 - (b) in a case where the first connection was made between two distribution systems, the electricity distributor that (at the time of the exercise of the power) operates the distribution system into which the first connection has been, or is expected to be, incorporated.
- (2) A reference in this Schedule to a payment in respect of first connection expenses includes a reference to such a payment made in pursuance of section 19(1).”
- (4) In section 16 (duty to connect on request), in subsection (4), after “23” insert “ and Schedule 5B ”.

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- (5) In section 16A (procedure for requiring a connection), in subsection (5)(b)—
- (a) omit “or regulations under section 19(2)”;
 - (b) after “19(2)” insert “ or regulations under Schedule 5B ”.
- (6) In section 23 (determination of disputes)—
- (a) after subsection (1) insert—

“(1ZA) This section also applies to any dispute arising under regulations under Schedule 5B between—

 - (a) an electricity distributor, and
 - (b) a person in respect of whom the electricity distributor exercises the reimbursement powers conferred by the regulations.”;
 - (b) after subsection (1C) insert—

“(1D) No dispute arising under regulations under Schedule 5B may be referred to the Authority after the end of the period of 12 months beginning with the time when the second connection (within the meaning of Schedule 5B) is made.”;
 - (c) after subsection (2) insert—

“(2A) Where a dispute arising under regulations under Schedule 5B falls to be determined under this section, the Authority may give directions as to the circumstances in which, and the terms on which, an electricity distributor is to make or (as the case may be) to maintain the second connection (within the meaning of Schedule 5B) pending the determination of the dispute.”;
 - (d) in subsection (4), after “(2)” insert “ , (2A) ”.

Commencement Information

I14 S. 52 in force at 6.4.2017 by S.I. 2017/108, reg. 2 (with reg. 3)

Consequential provision

53 Consequential provision

- (1) The Secretary of State may by regulations make consequential provision in connection with any provision made by or under this Part (other than section 40).
- (2) Regulations under this section may amend, repeal, revoke or otherwise modify the application of any enactment (but, in the case of an Act, only if the Act was passed before the end of the Session in which this Act is passed).
- (3) In this section “enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978.

Status:

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Changes to legislation:

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