



# Scotland Act 2016

## 2016 CHAPTER 11

### PART 5

#### OTHER EXECUTIVE COMPETENCE

#### 54 Gaelic Media Service

- (1) In section 183A of the Broadcasting Act 1990 (membership of the Gaelic Media Service)—
  - (a) in subsection (4) for “the Secretary of State and the Scottish Ministers” substitute “ the Scottish Ministers ”, and
  - (b) in subsection (6)(b) for “the Secretary of State with the agreement of the Scottish Ministers” substitute “ the Scottish Ministers ”.
- (2) Section 17(4) to (6) of the Scotland Act 2012 is repealed.

#### Commencement Information

II [S. 54](#) in force at 23.5.2016, see [s. 72\(7\)](#)

#### 55 Commissioners of Northern Lighthouses

- (1) Schedule 8 to the Merchant Shipping Act 1995 (Commissioners of Northern Lighthouses) is amended as follows.
- (2) In paragraph 1(2) (the Commissioners), after paragraph (e) insert—
  - “(f) a person appointed by the Secretary of State (in addition to the person nominated under paragraph (d));
  - (g) a person appointed by the Scottish Ministers.”
- (3) In paragraph 2(2) (elections by the Commissioners) for “five” substitute “ three ”.
- (4) After paragraph 4 insert—

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- “4A
- (1) The Commissioners shall send to the Scottish Ministers a copy of any accounts that they have been required to provide under section 218.
  - (2) The Scottish Ministers shall lay those accounts before the Scottish Parliament.
  - (3) The Commissioners shall send to the Scottish Ministers any report made under section 198(4)(b) (reports on inspections).
  - (4) The Scottish Ministers shall lay any such report before the Scottish Parliament.”

**Modifications etc. (not altering text)**

**C1** [S. 55](#) in force at 23.5.2016, see [s. 72\(7\)](#)

**56 Maritime and Coastguard Agency**

- (1) In section 1 of the Coastguard Act 1925 (transfer of the coastguard to the Board of Trade), at the end insert—
  - “(3) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to activities of Her Majesty's Coastguard in Scotland.
  - (4) In subsection (3) “Scotland” has the same meaning as in the Scotland Act 1998.”
- (2) In section 292 of the Merchant Shipping Act 1995 (general functions of the Secretary of State) after subsection (2) insert—
  - “(3) The Secretary of State must consult the Scottish Ministers about the strategic priorities of the Secretary of State in exercising functions under subsection (1) in relation to the safety standards of ships in Scotland and protecting the health and safety of persons on them.
  - (4) In subsection (3) “Scotland” has the same meaning as in the Scotland Act 1998.”

**Commencement Information**

**I2** [S. 56](#) in force at 23.5.2016, see [s. 72\(7\)](#)

**57 Rail: franchising of passenger services**

- (1) Section 25 of the Railways Act 1993 (public sector operators not to be franchisees) is amended as follows.
- (2) In the heading, at the beginning insert “ England and Wales: ”.
- (3) After subsection (2) insert—

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“(2A) Subsection (1) does not prevent a public sector operator from being a franchisee in relation to a Scottish franchise agreement.”

- (4) This section does not have effect in relation to any invitation to tender under section 26(2) of the Railways Act 1993 issued before the day on which this section comes into force.

#### Commencement Information

I3 S. 57 in force at 23.5.2016, see s. 72(7)

## 58 Fuel poverty: support schemes

- (1) The Energy Act 2010 is amended as follows.

- (2) In section 9 (schemes for reducing fuel poverty) after subsection (1) insert—

“(1A) In relation to Scotland, that is subject to section 14A (power of the Scottish Ministers to make schemes).”

- (3) After section 14 (regulations under Part 2: procedure) insert—

### “14A Power of the Scottish Ministers to make schemes under Part 2

- (1) Subject to the following provisions of this section the power under section 9 to make a scheme in relation to Scotland is exercisable by the Secretary of State so as to make only—
- provision as to the licensed suppliers to whom the scheme applies,
  - provision as to the aggregate amount of benefits to be provided under it by scheme suppliers, and
  - any other provision within section 9(4) or (9)(a) or (c)(v) or (vi).
- (2) The power to make other provision under that section for the purposes of the scheme is exercisable by the Scottish Ministers.
- (3) For the purposes of the exercise of that power by the Scottish Ministers, this Part applies—
- as if references to the Secretary of State in sections 9, 10 and 14(1) and (4) were references to the Scottish Ministers;
  - as if in section 10(7) “Parliament” were “the Scottish Parliament”.
- (4) The power of the Scottish Ministers under section 9 does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) The Scottish Ministers may not make regulations under section 9 unless—
- they have consulted the Secretary of State about the proposed regulations, and
  - the Secretary of State has agreed to the regulations being made.
- (6) Subsections (1) and (2) do not prevent the Secretary of State from making any provision under section 9 for the purposes of a scheme in relation to Scotland,

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or from varying or revoking regulations made by the Scottish Ministers under that section,—

- (a) with the agreement of the Scottish Ministers, or
- (b) without their agreement, if subsection (7), (9) or (11) applies.

(7) This subsection applies if—

- (a) a scheme in relation to England and Wales has been made, or the Secretary of State intends to make such a scheme, and
- (b) the Secretary of State is satisfied, after consulting the Scottish Ministers, that, to ensure that a scheme in relation to Scotland is made with a corresponding scheme period, it is necessary for the Secretary of State to make any provision not mentioned in subsection (1)(a) to (c).

(8) In paragraph (b) of subsection (7) a “corresponding scheme period” means a scheme period beginning and ending at the same time as that specified or to be specified in the scheme mentioned in paragraph (a).

(9) This subsection applies if it appears to the Secretary of State that a support scheme made in relation to Scotland is, alone or in conjunction with a scheme made or to be made in relation to England and Wales, likely to—

- (a) cause detriment to the United Kingdom, or
- (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency,

and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

(10) In determining for the purposes of subsection (9) whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of schemes made, or to be made, by the Secretary of State and the Scottish Ministers under section 9.

(11) This subsection applies if—

- (a) the Secretary of State makes or intends to make changes to a support scheme which would result in a significant change in the costs incurred by suppliers in complying with the scheme, and
- (b) the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

(12) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (9) or (11)—

- (a) must be in writing;
- (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (9)(a) or (b), or (as the case may be) to be necessary or expedient in view of the effect mentioned in subsection (11)(a);
- (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.

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- (13) Section 14(5) does not apply to regulations by which the Secretary of State makes provision by virtue of subsection (6), with or without other provision under section 9.”
- (4) Section 31 (orders and regulations) is amended as follows.
- (5) After subsection (1) insert—
- “(1A) Subsection (1) does not apply to regulations made by the Scottish Ministers (see section 27 of the Interpretation and Legislative Reform (Scotland) Act 2010: functions exercisable by Scottish statutory instrument).”
- (6) After subsection (4) insert—
- “(4A) Regulations made by the Scottish Ministers under section 9 are subject to the affirmative procedure (see section 29 of the Interpretative and Legislative Reform (Scotland) Act 2010).”
- (7) In subsection (6) after “Regulations” insert “ made by the Secretary of State ”.
- (8) After subsection (6) insert—
- “(6A) Regulations made by the Scottish Ministers may impose obligations or confer functions on a person (including the Scottish Ministers).”
- (9) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

#### Commencement Information

- I4** S. 58 in force at 1.12.2017 for specified purposes by S.I. 2017/1157, reg. 3(a)  
**I5** S. 58 in force at 1.4.2018 in so far as not already in force by S.I. 2017/1157, reg. 4

## 59 Energy company obligations

- (1) The Gas Act 1986 is amended as follows.
- (2) After section 33BC (promotion of reduction in carbon emissions) insert—

### “33BCA Scottish Ministers' promotion of reductions in carbon emissions: gas suppliers

- (1) Where the Secretary of State under section 33BC imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).

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- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BC, that section applies with the following modifications—
- (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
  - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
  - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon emissions reduction target under section 103(2A) of the Utilities Act 2000, and”;
  - (d) in subsection (11) “Citizens Advice” and “gas transporters” are omitted;
  - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “is subject to the affirmative procedure”;
  - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “is subject to the negative procedure”;
  - (g) for “Secretary of State” in each place is substituted “Scottish Ministers”.
- (4) The power of the Scottish Ministers under section 33BC does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall carbon emissions reduction target has been apportioned under section 103(2A) of the Utilities Act 2000, the Scottish Ministers must—
- (a) when making any order under section 33BC, comply with the duty in subsection (6), and
  - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 33BC (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall carbon emissions reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
- (a) “compliance costs” means the total costs to gas suppliers of complying with carbon emissions reduction obligations that, in relation to any period, are imposed by order under section 33BC, and
  - (b) “costs relating to Scotland” means the total costs to gas suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 33BC unless—
- (a) they have consulted the Secretary of State about the proposed order, and
  - (b) the Secretary of State has agreed to the order being made.

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- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
- (a) section 33BC(1A), (3), (5)(a) or (7)(a), or
  - (b) section 33BC(2A) where an overall carbon emissions reduction target has not been apportioned under section 103(2A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 33BC or from varying or revoking an order made by the Scottish Ministers under that section—
- (a) with the agreement of the Scottish Ministers, or
  - (b) without their agreement, if subsection (11) applies.
- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
- (a) cause detriment to the United Kingdom,
  - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
  - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 33BC or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
- (a) must be in writing;
  - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
  - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (3) After section 33BD (promotion of reductions in home-heating costs) insert—

**“33BDA Scottish Ministers' promotion of reductions in home-heating costs: gas suppliers**

- (1) Where the Secretary of State under section 33BD imposes on gas suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the

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purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.

- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 33BD, that section applies with the following modifications—
  - (a) for subsection (1) there is substituted a power by order to specify how gas suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
  - (b) subsection (3) is omitted;
  - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 33BC as applied by subsection (4) are omitted;
  - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating cost reduction target under section 103A(3A) of the Utilities Act 2000, and”;
  - (e) in section 33BC(11) as applied by subsection (4) “Citizens Advice” and “gas transporters” are omitted;
  - (f) in section 33BC(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
  - (g) in section 33BC(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
  - (h) for “Secretary of State” in each place (including any references in section 33BC that apply by virtue of subsection (4)), is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 33BD does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall home-heating cost reduction target has been apportioned under section 103A(3A) of the Utilities Act 2000, the Scottish Ministers must—
  - (a) when making any order under section 33BD, comply with the duty in subsection (6), and
  - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 33BD (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall home-heating cost reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—



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- (a) “compliance costs” means the total costs to gas suppliers of complying with home-heating cost reduction obligations that, in relation to any period, are imposed by order under section 33BD, and
  - (b) “costs relating to Scotland” means the total costs to gas suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 33BD unless—
  - (a) they have consulted the Secretary of State about the proposed order, and
  - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
  - (a) section 33BD(3),
  - (b) section 33BC(3), (5)(a) or (7)(a) as applied by section 33BD(4), or
  - (c) section 33BD(2)(a) where an overall home-heating cost reduction target has not been apportioned under section 103A(3A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 33BD or from varying or revoking an order made by the Scottish Ministers under that section—
  - (a) with the agreement of the Scottish Ministers, or
  - (b) without their agreement, if subsection (11) applies.
- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
  - (a) cause detriment to the United Kingdom,
  - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
  - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 33BD or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
  - (a) must be in writing;

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- (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
  - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (4) The Electricity Act 1989 is amended as follows.
- (5) After section 41A (promotion of reductions in carbon emissions) insert—

**“41AA Scottish Ministers' promotion of reductions in carbon emissions: electricity suppliers**

- (1) Where the Secretary of State under section 41A imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103 of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41A, that section applies with the following modifications—
  - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the carbon emissions reduction target through measures carried out in Scotland;
  - (b) subsections (1A), (3), (5)(a), (7)(a) and (10A) are omitted;
  - (c) in subsection (2A) at the beginning of paragraph (b) there is inserted “where the Secretary of State has apportioned the overall carbon emissions reduction target under section 103(2A) of the Utilities Act 2000, and”;
  - (d) in subsection (11) “Citizens Advice” and “electricity distributors” are omitted;
  - (e) in subsection (12), for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;
  - (f) in subsection (12A) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
  - (g) for “Secretary of State” in each place is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 41A does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall carbon emissions reduction target has been apportioned under section 103(2A) of the Utilities Act 2000, the Scottish Ministers must—
  - (a) when making any order under section 41A, comply with the duty in subsection (6), and

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- (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 41A (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall carbon emissions reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
  - (a) “compliance costs” means the total costs to electricity suppliers of complying with carbon emissions reduction obligations that, in relation to any period, are imposed by order under section 41A, and
  - (b) “costs relating to Scotland” means the total costs to electricity suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 41A unless—
  - (a) they have consulted the Secretary of State about the proposed order, and
  - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
  - (a) section 41A(1A), (3), (5)(a) or (7)(a), or
  - (b) section 41A(2A) where an overall carbon emissions reduction target has not been apportioned under section 103(2A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 41A or from varying or revoking an order made by the Scottish Ministers under that section—
  - (a) with the agreement of the Scottish Ministers, or
  - (b) without their agreement, if subsection (11) applies.
- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
  - (a) cause detriment to the United Kingdom,
  - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
  - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.

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- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 41A or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
- (a) must be in writing;
  - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
  - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (6) After section 41B (promotion of reductions in home-heating costs) insert—

**“41BA Scottish Ministers' promotion of reductions in home-heating costs: electricity suppliers**

- (1) Where the Secretary of State under section 41B imposes on electricity suppliers obligations to achieve a target within a specified period, the power to make orders under that section is exercisable by the Scottish Ministers for the purposes of those obligations imposed in relation to Scotland and not, except as provided by subsections (9) and (10), by the Secretary of State.
- (2) An obligation is imposed in relation to Scotland to the extent that measures to meet that obligation may be carried out in Scotland (disregarding any power to elect under section 103A of the Utilities Act 2000).
- (3) For the purposes of the exercise by the Scottish Ministers of the power to make an order under section 41B, that section applies with the following modifications—
  - (a) for subsection (1) there is substituted a power by order to specify how electricity suppliers may meet their obligations to achieve the home-heating cost reduction target through measures carried out in Scotland;
  - (b) subsection (3) is omitted;
  - (c) subsections (3), (5)(a), (7)(a) and (10A) of section 41A as applied by subsection (4) are omitted;
  - (d) in subsection (2)(a) at the beginning of sub-paragraph (ii) there is inserted “where the Secretary of State has apportioned the overall home-heating costs reduction target under section 103A(3A) of the Utilities Act 2000, and”;
  - (e) in section 41A(11) as applied by subsection (4) “Citizens Advice” and “electricity distributors” are omitted;
  - (f) in section 41A(12) as applied by subsection (4) for the words from “shall not be made” to the end is substituted “ is subject to the affirmative procedure ”;

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*Status: Point in time view as at 01/10/2018.*

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- (g) in section 41A(12A) as applied by subsection (4) for the words from “shall be subject to” to the end is substituted “ is subject to the negative procedure ”;
  - (h) for “Secretary of State” in each place (including any references in section 41A that apply by virtue of subsection (4)), is substituted “ Scottish Ministers ”.
- (4) The power of the Scottish Ministers under section 41B does not include power to make provision in relation to the subject-matter of sections 88 to 90 of the Energy Act 2008 (smart meters).
- (5) Where an overall home-heating cost reduction target has been apportioned under section 103A(3A) of the Utilities Act 2000, the Scottish Ministers must—
  - (a) when making any order under section 41B, comply with the duty in subsection (6), and
  - (b) if the Secretary of State amends any order under that section, make any provision they think necessary, in consequence of the amendment, to comply with that duty.
- (6) The duty of the Scottish Ministers where subsection (5)(a) or (b) applies is to exercise their powers under section 41B (subject to subsection (8)) in the way they think most likely to secure that the proportion of compliance costs that is represented by costs relating to Scotland is no greater than the proportion of the overall home-heating cost reduction target that is represented by the part of it apportioned to measures carried out in Scotland.
- (7) In subsection (6)—
  - (a) “compliance costs” means the total costs to electricity suppliers of complying with home-heating cost reduction obligations that, in relation to any period, are imposed by order under section 41B, and
  - (b) “costs relating to Scotland” means the total costs to electricity suppliers of complying with obligations that, in relation to the same period, are imposed in relation to Scotland.
- (8) The Scottish Ministers may not make an order under section 41B unless—
  - (a) they have consulted the Secretary of State about the proposed order, and
  - (b) the Secretary of State has agreed to the order being made.
- (9) Subsection (1) does not prevent the Secretary of State from making provision under—
  - (a) section 41B(3),
  - (b) section 41A(3), (5)(a) or (7)(a) as applied by section 41B(4), or
  - (c) section 41B(2)(a) where an overall home-heating cost reduction target has not been apportioned under section 103A(3A) of the Utilities Act 2000.
- (10) Subsection (1) does not prevent the Secretary of State from making any other provision under section 41B or from varying or revoking an order made by the Scottish Ministers under that section—
  - (a) with the agreement of the Scottish Ministers, or
  - (b) without their agreement, if subsection (11) applies.

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- (11) This subsection applies if it appears to the Secretary of State, in the case of obligations imposed in relation to Scotland (the “Scottish obligations”), taking into account any provision made by the Scottish Ministers, that the Scottish obligations are, alone or in conjunction with obligations imposed or to be imposed in relation to England and Wales, likely to—
- (a) cause detriment to the United Kingdom,
  - (b) adversely affect the ability of the United Kingdom to comply with an international agreement or arrangement in relation to climate change or energy efficiency, or
  - (c) result in costs incurred by suppliers that are not broadly equivalent in relation to England and Wales and in relation to Scotland,
- and the Scottish Ministers have failed to comply with a request made to them by the Secretary of State to make modifications specified by the Secretary of State.
- (12) In determining for the purposes of subsection (11), whether detriment is likely to be caused to the United Kingdom, considerations that the Secretary of State may take into account include the costs imposed on suppliers by virtue of obligations imposed or to be imposed by the Secretary of State under section 41B or any provision made by the Scottish Ministers under that section.
- (13) A request by the Secretary of State to the Scottish Ministers for the purposes of subsection (11)—
- (a) must be in writing;
  - (b) must specify only modifications that appear to the Secretary of State to be necessary to prevent the effect mentioned in subsection (11)(a), (b) or (c);
  - (c) must specify the time within which the modifications are to be made, which must not be less than 2 months from the date of the request.”
- (7) Where an amendment made by this section imposes a requirement to consult or to obtain consent, the requirement may be satisfied by consultation undertaken or consent obtained before this section comes into force.

#### Commencement Information

- I6** S. 59 in force at 1.12.2017 for specified purposes by S.I. 2017/1157, reg. 3(b)  
**I7** S. 59 in force at 1.10.2018 in so far as not already in force by S.I. 2017/1157, reg. 5(a)

## 60 Apportionment of targets

- (1) The Utilities Act 2000 is amended as follows.
- (2) Section 103 (overall carbon emissions reduction targets) is amended as follows.
- (3) After subsection (2) insert—
  - “(2A) Where an overall target applies in relation to a section mentioned in subsection (1) the order specifying the target may make provision for the target to be apportioned between—
    - (a) measures carried out in England and Wales, and

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(b) measures carried out in Scotland,  
by reference to such criteria as may be specified in the order.”

(4) After subsection (3) insert—

“(3A) Where a target is apportioned under subsection (2A) for the purposes of a section, an order under that section may include provision for a supplier to elect, subject to any conditions specified in the order—

- (a) that, for the purposes of meeting the carbon emissions reduction target under an obligation imposed by the order in relation to England and Wales, a measure carried out in Scotland is to be treated instead as carried out in England and Wales;
- (b) that, for the purposes of meeting the carbon emissions reduction target under an obligation imposed by the order in relation to Scotland, a measure carried out in England and Wales is to be treated instead as carried out in Scotland.

(3B) An order may not make provision under subsection (3A)(b) unless the Scottish Ministers have agreed to such provision being made.”

(5) Section 103A (overall home-heating cost reduction targets) is amended as follows.

(6) After subsection (3) insert—

“(3A) Where an overall target applies in relation to a section mentioned in subsection (1) the order specifying the target may make provision for the target to be apportioned between—

- (a) measures carried out in England and Wales, and
- (b) measures carried out in Scotland,

by reference to such criteria as may be specified in the order.”

(7) After subsection (4) insert—

“(4A) Where a target is apportioned under subsection (3A) for the purposes of a section, an order under that section may include provision for a supplier to elect, subject to any conditions specified in the order,—

- (a) that, for the purposes of meeting the home-heating cost reduction target under an obligation imposed by the order in relation to England and Wales, a measure carried out in Scotland is to be treated instead as carried out in England and Wales;
- (b) that, for the purposes of meeting the home-heating cost reduction target under an obligation imposed by the order in relation to Scotland, a measure carried out in England and Wales is to be treated instead as carried out in Scotland.

(4B) An order may not make provision under subsection (4A)(b) unless the Scottish Ministers have agreed to such provision being made.”

(8) Section 103B (power to require information) is amended as follows.

(9) In the heading after “Secretary of State” insert “ and the Scottish Ministers ”.

(10) In subsection (1) at the beginning insert “ Subject to subsection (1A), ” and after that subsection insert—

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“(1A) The Scottish Ministers may exercise the power in subsection (1)(b) and (c) in order to require information to review the operation of any carbon emissions reduction order or home-heating cost reduction order made by the Scottish Ministers and to establish and maintain a measures record in relation to such orders.”

(11) In subsection (2)—

- (a) after the first “Secretary of State” insert “ or the Scottish Ministers ”, and
- (b) after the second “Secretary of State” insert “ and the Scottish Ministers ”.

(12) After subsection (6) insert—

“(6A) Information obtained by virtue of subsection (1A) may be disclosed by the Scottish Ministers—

- (a) to the Secretary of State;
- (b) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of a carbon emissions reduction order or home-heating cost reduction order.”

(13) In section 105 (general restrictions on disclosure of information), in subsection (3) after paragraph (a) insert—

“(aza) it is made for the purpose of facilitating the performance, by a body specified as the Administrator under an order under section 33BC or 33BD of the Gas Act 1986 or under section 41A or 41B of the Electricity Act 1989, of its functions under that section and the order;”.

#### Commencement Information

- I8** S. 60 in force at 1.12.2017 for specified purposes by [S.I. 2017/1157](#), [reg. 3\(c\)](#)
- I9** S. 60 in force at 1.10.2018 in so far as not already in force by [S.I. 2017/1157](#), [reg. 5\(b\)](#)

## 61 Renewable electricity incentive schemes: consultation

In the Scotland Act 1998 after section 90B (inserted by section 36) insert—

*“Renewable electricity incentive schemes*

### 90C Renewable electricity incentive schemes: consultation

- (1) The Secretary of State must consult the Scottish Ministers before—
  - (a) establishing a renewable electricity incentive scheme that applies in Scotland, or
  - (b) amending such a scheme as it relates to Scotland.
- (2) Subsection (1) does not apply to amendments that appear to the Secretary of State to be minor or made only for technical or administrative reasons; and the Secretary of State is not to be taken to establish or amend a scheme by exercising a power under a scheme, other than a power that is exercisable subject to any parliamentary procedure.



*Status: Point in time view as at 01/10/2018.*

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- (3) Subsection (1) does not require the Secretary of State to consult the Scottish Ministers about any levy in connection with a renewable electricity incentive scheme.
- (4) In this section a “renewable electricity incentive scheme” means any scheme, whether statutory or otherwise, that provides an incentive to generate, or facilitate the generation of, electricity from sources of energy other than fossil fuel or nuclear fuel. This includes provision made by or under the following so far as they relate to the generation of electricity from sources of energy other than fossil fuel or nuclear fuel—
  - (a) sections 6 to 26 of the Energy Act 2013 (contracts for difference);
  - (b) sections 41 to 43 of the Energy Act 2008 (feed-in tariffs for small-scale generation of electricity);
  - (c) sections 32 to 32Z2 of the Electricity Act 1989 (renewables obligations or certificate purchase obligations).
- (5) Where, before the commencement of this section, the Secretary of State has consulted, or is consulting, the Scottish Ministers regarding a renewable electricity incentive scheme, that consultation is to be treated as fulfilling the obligation in subsection (1).”

#### **Commencement Information**

**110** S. 61 in force at 23.5.2016, see s. 72(7)

## **62 Offshore renewable energy installations**

- (1) The Energy Act 2004 is amended as follows.
- (2) Section 95 (safety zones around renewable energy installations) is amended as follows.
- (3) For subsection (1A) substitute—

“(1A) In this section and section 96 the “appropriate Minister” means the Scottish Ministers, in relation to a renewable energy installation—

- (a) which is to be or is wholly in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas,
- (b) to which paragraph (a) has ceased to apply because of an extension or proposed extension, if subsection (1B) applies, or
- (c) to the extent that it is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, if paragraph (a) has ceased to apply because of an extension or proposed extension, and subsection (1B) does not apply,

and otherwise means the Secretary of State (subject to section 13 of the Marine and Coastal Access Act 2009, which transfers certain functions of the Secretary of State to the Marine Management Organisation).

- (1B) This subsection applies if there is an agreement in force between the Secretary of State and the Scottish Ministers providing for the Scottish Ministers to be the appropriate Minister in relation to the whole of the installation.

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*Status: Point in time view as at 01/10/2018.*

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- (1C) Where subsection (1B) applies, the Scottish Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.”
- (4) In subsections (2), (3) and (7) for “Secretary of State” in each place, substitute “ appropriate Minister ”.
- (5) After subsection (4) insert—
- “(4A) Before issuing a notice under this section which relates, wholly or partly, to an area outside the areas mentioned in subsection (4), the Scottish Ministers must consult the Secretary of State.”
- (6) Section 96 (prohibited activities in safety zones) is amended as follows.
- (7) In subsection (1)(b) and (3)(b) for “Secretary of State” substitute “ appropriate Minister ”.
- (8) In subsection (8)—
- (a) after “section” insert “—
    - (a) if made by the Secretary of State,”
    - (b) at the end insert “;
      - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (9) In section 105 (requirement to prepare decommissioning programmes) after subsection (1) insert—
- “(1A) In this Chapter “appropriate Minister”—
- (a) in relation to a renewable energy installation, means the Scottish Ministers—
    - (i) if the installation is to be or is wholly in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, and is not being or proposed to be extended outside those areas,
    - (ii) if sub-paragraph (i) has ceased to apply to the installation because of an extension or proposed extension, and subsection (1B) applies, or
    - (iii) to the extent that the installation is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone, if sub-paragraph (i) has ceased to apply because of an extension or proposed extension, and subsection (1B) does not apply;

and otherwise means the Secretary of State;
  - (b) in relation to an electric line which is or has been a related line, means—
    - (i) the Scottish Ministers, to the extent that the line is to be or is in an area of Scottish waters or an area of waters in a Scottish part of a Renewable Energy Zone;
    - (ii) otherwise, the Secretary of State.

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- (1B) This subsection applies to an installation if there is an agreement in force between the Secretary of State and the Scottish Ministers providing for the Scottish Ministers to be the appropriate Minister in relation to the whole of the installation.
- (1C) Where subsection (1B) applies, the Scottish Ministers must consult the Secretary of State about the exercise of their functions as the appropriate Minister.”
- (10) In Chapter 3 (decommissioning of offshore installations), except in the provisions listed in subsection (11), for “Secretary of State” in each place substitute “ appropriate Minister ”.
- (11) The provisions not amended by subsection (10) are—
- (a) sections 105(5), 106(2), 107(2), 108(7) and 111(6) (consultation of the Scottish Ministers);
  - (b) section 113(2) (proceedings in England and Wales or Northern Ireland).
- (12) In the provisions listed in subsection (11)(a) omit “wholly or”.
- (13) In section 111(7) (regulations about decommissioning)—
- (a) after “section” insert “—
    - (a) if made by the Secretary of State,”
  - (b) at the end insert “;
    - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (14) In section 112(7) (duty to inform Secretary of State: regulations)—
- (a) after “section” insert “—
    - (a) if made by the Secretary of State,”
  - (b) at the end insert “;
    - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”
- (15) In section 114 (interpretation of Chapter 3) in subsection (2) before the definition of “decommissioning programme” insert—
- ““appropriate Minister” has the meaning given by section 105(1A);”.
- (16) In section 192 (powers exercisable by statutory instrument) in subsection (4) after “Secretary of State” insert “ , the Scottish Ministers ”.
- (17) Schedule 16 (applications and proposals for notices under section 95) is amended as follows.
- (18) For “Secretary of State” in each place, except in paragraph 7, substitute “ appropriate Minister ”.
- (19) In paragraph 9—
- (a) after “Schedule” insert “—
    - (a) if made by the Secretary of State,”
  - (b) at the end insert “;

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- (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010).”

(20) In section 13 of the Marine and Coastal Access Act 2009 (safety zones: functions under section 95 of the Energy Act 2004) omit subsection (7).

#### Commencement Information

**I11** S. 62 in force at 1.4.2017 by S.I. 2017/300, reg. 3 (with regs. 4-6)

### 63 References to Competition and Markets Authority

In section 132(5) of the Enterprise Act 2002 (ministerial power to make references to Competition and Markets Authority: meaning of “appropriate Minister”)—

- (a) omit the “or” after paragraph (a), and
- (b) after paragraph (b) insert—
  - “(c) the Scottish Ministers and the Secretary of State acting jointly; or
  - (d) the Scottish Ministers, the Secretary of State and one or more than one other Minister of the Crown, acting jointly.”

#### Commencement Information

**I12** S. 63 in force at 23.5.2016, see s. 72(7)

**Status:**

Point in time view as at 01/10/2018.

**Changes to legislation:**

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