



# Energy Act 2023

## 2023 CHAPTER 52

### PART 1

#### LICENSING OF CARBON DIOXIDE TRANSPORT AND STORAGE

### CHAPTER 4

#### SPECIAL ADMINISTRATION REGIME

#### *Transport and storage administration orders*

#### **42 Transport and storage administration orders**

- (1) A transport and storage administration order means an order which—
  - (a) is made by the court in relation to a company which holds a licence under section 7, and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) In this Chapter—
  - (a) a transport and storage administration order is referred to as a T&S administration order,
  - (b) a company which holds a licence under [section 7](#) is referred to as a T&S company, and
  - (c) the person appointed in relation to a T&S company for the purposes of a T&S administration order is referred to as the T&S administrator of the company.
- (3) The T&S administrator of a company must manage the company's affairs, business and property, and exercise and perform all the powers and duties of a T&S administrator, so as to achieve the objective set out in [section 43](#).
- (4) In relation to a T&S administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only—

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- (a) to its affairs and business so far as carried on in Great Britain or a relevant controlled place, and
  - (b) to its property in Great Britain or a relevant controlled place.
- (5) In this section, “relevant controlled place” means a controlled place within the meaning of section 17(3) to (4) of the Energy Act 2008 other than a place—
- (a) in Great Britain,
  - (b) in Northern Ireland, or
  - (c) in, under or over so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

#### Commencement Information

**II** S. 42 in force at 26.12.2023, see s. 334(3)(a)

### 43 Objective of a transport and storage administration

- (1) The objective of a transport and storage administration is to secure—
- (a) that the activities authorised by the licence of the T&S company to which the administration relates commence, or continue, in a manner which—
    - (i) is efficient and economical, and
    - (ii) ensures the safety and security of the transport and storage network, or the part of that network, to which the licence relates, and
  - (b) that it becomes unnecessary, by one or both of the following means, for the T&S administration order to remain in force for that purpose.
- (2) Those means are—
- (a) the rescue as a going concern of the company subject to the T&S administration order, and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the T&S administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the transport and storage administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the T&S administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company, and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a transport and storage administration may be achieved by a transfer falling within subsection (3) to the extent only that—
- (a) the rescue as a going concern of the company subject to the T&S administration order is not reasonably practicable or is not reasonably practicable without such a transfer,

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- (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such a transfer,
  - (c) such a transfer would produce a result for the company’s creditors as a whole that is better than the result that would be produced without it, or
  - (d) such a transfer would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without it.
- (6) In [subsection \(1\)\(a\)](#)—
- (a) the reference to the activities authorised by the licence of the T&S company to which the administration relates includes a reference to any construction work or other activities needing to be carried out to commence those activities, and
  - (b) the reference to the safety and security of the transport and storage network, or the part of that network, to which the licence relates includes a reference to the safety and security of any infrastructure and facilities being constructed for that network, or that part of that network.

#### Commencement Information

**I2** S. 43 in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

### *Application and amendment of the Energy Act 2004*

#### **44 Application of certain provisions of the Energy Act 2004**

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to a T&S administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in [subsections \(2\) to \(4\)](#).
- (2) In the application of those provisions generally—
- (a) for “energy administration”, in each place where it occurs, substitute “transport and storage administration”;
  - (b) for “energy administrator”, in each place where it occurs, substitute “T&S administrator”;
  - (c) for “Great Britain”, in each place it occurs (other than paragraphs 4(2)(e) and 11(4) and (7) of Schedule 21), substitute “Great Britain or a relevant controlled place”;
  - (d) for “a protected energy company”, in each place where it occurs, substitute “a T&S company”.
- (3) In the application of Schedule 20—
- (a) in paragraph 32(1)(d), for the words from ““energy administration application”” to “Energy Act 2004” substitute ““transport and storage administration application” means an application to the court for a transport and storage administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 44 of the Energy Act 2023”;
  - (b) in paragraph 32(1)(e), for “section 155 of the Energy Act 2004” substitute “section 43 of the Energy Act 2023”;

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- (c) in paragraph 36, for “section 154(4) of this Act” substitute “[section 42\(4\)](#) of the Energy Act 2023”;
  - (d) in paragraph 43, after “the Energy Act 2004” insert “and [section 44](#) of the Energy Act 2023”;
  - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and [section 44](#) of the Energy Act 2023”;
  - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by [section 44](#) of the Energy Act 2023”;
  - (g) omit paragraph 46 (but see [section 48](#) of this Act);
  - (h) in paragraph 47, after “Part 1 of this Schedule” insert “and [section 44](#) of the Energy Act 2023”.
- (4) In the application of Schedule 21—
- (a) for “an energy transfer scheme”, in each place where it occurs, substitute “a T&S transfer scheme”;
  - (b) for “old energy company”, in each place where it occurs, substitute “old T&S company”;
  - (c) for “new energy company”, in each place where it occurs, substitute “new T&S company”;
  - (d) in paragraph 1(b), for “section 155(3)” substitute “[section 43\(3\)](#) of the Energy Act 2023”;
  - (e) in paragraph 3(1), for “an “energy transfer scheme”” substitute “a “T&S transfer scheme””;
  - (f) in paragraphs 3(8) and 9(6), for “GEMA” substitute “—
    - (a) GEMA,
    - (b) the Health and Safety Executive,
    - (c) the Oil and Gas Authority,
    - (d) the appropriate devolved authorities (if any), and
    - (e) such other persons as the Secretary of State considers appropriate.”;
  - (g) in paragraph 5, after sub-paragraph (4) insert—
 

“(5) This paragraph also applies in relation to any licence or permit that the relevant licence mentioned in sub-paragraph (1) requires its holder to hold as it applies in relation to the relevant licence.”;
  - (h) in paragraphs 6(3) and 11(2), for “the energy transfer scheme” substitute “the T&S transfer scheme”;
  - (i) in paragraph 12, for “section 155” substitute “[section 43](#) of the Energy Act 2023”;
  - (j) after paragraph 13 insert—
 

“14 For the purposes of paragraphs 3(8)(e) and 9(6)(e) the “appropriate devolved authorities” are—

    - (a) the Welsh Ministers, if provision making the scheme or (as the case may be) modification would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);

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- (b) the Scottish Ministers, if provision making the scheme or (as the case may be) modification would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.”
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)—
- (a) insert, at the appropriate places, the following definitions—
- ““objective of the transport and storage administration” is to be construed in accordance with section 43 of the Energy Act 2023;”;
- ““relevant controlled place” has the meaning given by section 42(5) of the Energy Act 2023;”;
- ““T&S company” has the meaning given by section 42(2) of the Energy Act 2023;”;
- ““transport and storage administration order” has the meaning given by section 42(1) of the Energy Act 2023;”;
- ““transport and storage administration rules” means the rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 44 of the Energy Act 2023;”;
- (b) for the definition of “energy administrator” substitute—
- ““T&S administrator” has the meaning given by section 49 of the Energy Act 2023;”;
- (c) for the definition of “relevant licence” substitute—
- ““relevant licence” means a licence under section 7 of the Energy Act 2023.”

**Commencement Information**

**I3** S. 44 in force at 26.12.2023, see s. 334(3)(a)

**45 Conduct of administration, transfer schemes etc**

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), for “or section 33 of the Nuclear Energy (Financing) Act 2022” substitute “, section 33 of the Nuclear Energy (Financing) Act 2022 or section 44 of the Energy Act 2023”.

**Commencement Information**

**I4** S. 45 in force at 26.12.2023, see s. 334(3)(a)

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### *Licence modifications*

#### **46 Modification of conditions of licences**

- (1) The Secretary of State may modify the conditions of a T&S company’s licence (“the section 7 licence”) so that they include—
  - (a) conditions relating to the recovery of amounts owed to the Secretary of State by the T&S company by virtue of, or otherwise relating to, financial assistance given by the Secretary of State while a T&S administration order is in force in relation to the T&S company;
  - (b) conditions relating to raising of funds for the purpose of meeting of expenses arising by virtue of the order.
- (2) The Secretary of State may exercise the power under [subsection \(1\)](#) only if a T&S administration order is in force in relation to the T&S company.
- (3) Before making a modification under [subsection \(1\)](#), the Secretary of State must consult—
  - (a) the economic regulator,
  - (b) if the [section 7](#) licence authorises activities within [section 2\(2\)\(a\)](#), the person who granted any associated licence under section 18 of the Energy Act 2008, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) The power to make modifications under [subsection \(1\)](#) includes power to make such incidental, consequential or transitional modifications as the Secretary of State considers necessary or expedient.
- (5) In [subsection \(1\)\(a\)](#), “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.
- (6) For the purposes of this section, a licence under section 18 of the Energy Act 2008 (“the carbon storage licence”) is an “associated licence” in relation to the [section 7](#) licence if—
  - (a) the carbon storage licence is in respect of activities within [section 17\(2\)\(a\)](#) of that Act, and
  - (b) any part of the site to which the [section 7](#) licence relates is within any place to which the carbon storage licence relates.

#### **Commencement Information**

**I5** [S. 46](#) in force at 26.12.2023, see [s. 334\(3\)\(a\)](#)

### *Powers to modify enactments*

#### **47 Modification under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in [subsection \(2\)](#) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.

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- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002), for “or section 33 of the Nuclear Energy (Finance) Act 2022” substitute “, section 33 of the Nuclear Energy (Finance) Act 2022 or section 44 of the Energy Act 2023”.

#### Commencement Information

**I6** S. 47 in force at 26.12.2023, see s. 334(3)(a)

### 48 Power to make further modifications of insolvency legislation

- (1) The Secretary of State may by regulations—
  - (a) provide for insolvency legislation to apply in relation to any provision made by or under this Chapter;
  - (b) make such modifications of insolvency legislation as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter (including any insolvency legislation that is applied under paragraph (a)).
- (2) In relation to regulations under subsection (1), “insolvency legislation” means—
  - (a) the Insolvency Act 1986,
  - (b) Chapter 3 of Part 3 of the Energy Act 2004, and
  - (c) any other provision that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986, and is—
    - (i) contained in an Act passed before this Act or in the same Session, or
    - (ii) made under an Act before the regulations come into force.
- (3) Provision made under subsection (1) may amend this Chapter.
- (4) Regulations under this section are subject to the affirmative procedure.

#### Commencement Information

**I7** S. 48 in force at 26.12.2023, see s. 334(3)(a)

### *Interpretation*

### 49 Interpretation of Chapter 4

- (1) In this Chapter—

“business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;

“company” means—

  - (a) a company registered under the Companies Act 2006, or
  - (b) an unregistered company;

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“court”, in relation to a company, means the court—

- (a) having jurisdiction to wind up the company, or
- (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“non-GB company” means a company incorporated outside Great Britain;

“objective of a transport and storage administration” is to be construed in accordance with section 43;

“subsidiary” and “wholly-owned subsidiary” have the meaning given by section 1159 of the Companies Act 2006;

“T&S administration order” (or “transport and storage administration order”) has the meaning given by section 42(1);

“T&S administrator” has the meaning given by section 42(2)(c) and is to be construed in accordance with subsection (2) of this section;

“T&S company” has the meaning given by section 42(2)(b);

“unregistered company” means a company that is not registered under the Companies Act 2006.

(2) In this Chapter references to the T&S administrator of a company—

- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 44 of this Act to be the T&S administrator of that company, and
- (b) where two or more persons are appointed to be the T&S administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 44 of this Act.

#### Commencement Information

**18** S. 49 in force at 26.12.2023, see s. 334(3)(a)



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