



# Electricity Act 1989

## 1989 CHAPTER 29

### PART I

#### ELECTRICITY SUPPLY

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

- C1** Pt. I modified (5.10.2004) by [Energy Act 2004](#) (c. 20), **ss. 184(12)**, 185(13), 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**
- C2** Pt. I modified (S.) (30.11.2005) by [The Electricity from Non-Fossil Fuel Sources \(Scotland\) Saving Arrangements Order 2005](#) (S.S.I. 2005/549), arts. 1(1), **9**
- C3** Pt. I excluded (30.12.2015) by [The Port Talbot Steelworks Generating Station Order 2015](#) (S.I. 2015/1984), arts. 1, **7(2)** (with art. 26)
- C4** Pt. I (ss. 1-64) applied (1.10.2001) by S.I. 2001/3264, **regs. 4(2)**, 5(2)
- C5** Pt. I (ss. 1-64) amended (E.W.) (27.10.2000) by S.I. 2000/2727, **art. 10**  
Pt. I (ss. 1-64) amended (7.11.2000) by [2000 c. 27](#), **s. 105(1)(a)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-12](#))  
Pt. I (ss. 1-64) amended (E.W.) (1.10.2001) by S.I. 2000/2727, **art. 10** (as substituted (1.10.2001) by S.I. 2001/3268, **art. 2(13)**)

##### *Introductory*

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

- C6** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013](#) (c. 32), **ss. 136(2)**, 156(2)

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**Textual Amendments**

**F1** S. 1 repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F2** .....

**Textual Amendments**

**F2** S. 2 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

**F3** **General duties of Secretary of State and Director.**

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**Textual Amendments**

**F3** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

**[F4]3A The principal objective and general duties of the Secretary of State and the Authority.**

(1) The principal objective of the Secretary of State and the Gas and Electricity Markets Authority (in this Act referred to as “the Authority”) in carrying out their respective functions under this Part is to protect the interests of [F5existing and future] consumers in relation to electricity conveyed by distribution systems [F6or transmission systems]F7... .

[ Those interests of existing and future consumers are their interests taken as a whole, F8(1A) including—

- (a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases; F9...
- (b) their interests in the security of the supply of electricity to them[F10]; and
- (c) their interests in the fulfilment by the Authority, when carrying out its functions as designated regulatory authority for Great Britain, of the objectives set out in Article 36(a) to (h) of the Electricity Directive.]

(1B) The Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

(1C) Before deciding to carry out functions under this Part in a particular manner with a view to promoting competition as mentioned in subsection (1B), the Secretary of State or the Authority shall consider—

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- (a) to what extent the interests referred to in subsection (1) of consumers would be protected by that manner of carrying out those functions; and
  - (b) whether there is any other manner (whether or not it would promote competition as mentioned in subsection (1B)) in which the Secretary of State or the Authority (as the case may be) could carry out those functions which would better protect those interests.]
- (2) <sup>F11</sup>In performing the duties under subsections (1B) and (1C), the Secretary of State or the Authority shall have regard to] —
- (a) the need to secure that all reasonable demands for electricity are met; and
  - (b) the need to secure that licence holders are able to finance the activities which are the subject of obligations imposed by or under this Part<sup>F12</sup>, the Utilities Act 2000<sup>F13</sup>, Part 2 or 3 of the Energy Act 2004<sup>F14</sup>, Part 2 or 5 of the Energy Act 2008 or section 4, Part 2, <sup>F15</sup>sections 26 to 29 of the Energy Act 2010 or Part 2 of the Energy Act 2013<sup>F16</sup>; and
  - (c) the need to contribute to the achievement of sustainable development.]
- (3) In performing <sup>F17</sup>the duties under subsections (1B), (1C) and (2)], the Secretary of State or the Authority shall have regard to the interests of—
- (a) individuals who are disabled or chronically sick;
  - (b) individuals of pensionable age;
  - (c) individuals with low incomes; and
  - (d) individuals residing in rural areas;
- but that is not to be taken as implying that regard may not be had to the interests of other descriptions of consumer.
- (4) The Secretary of State and the Authority may, in carrying out any function under this Part, have regard to—
- (a) the interests of consumers in relation to gas conveyed through pipes (within the meaning of the <sup>M1</sup>Gas Act 1986); and
  - (b) any interests of consumers in relation to—
    - <sup>F18</sup>(i) communications services and electronic communications apparatus, or]
    - (ii) water services or sewerage services (within the meaning of the <sup>M2</sup>Water Industry Act 1991),which are affected by the carrying out of that function.
- (5) Subject to <sup>F19</sup>subsections (1B) and] (2), <sup>F20</sup>and to section 132(2) of the Energy Act 2013 (duty to carry out functions in manner best calculated to further delivery of policy outcomes)] the Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which he or it considers is best calculated—
- (a) to promote efficiency and economy on the part of persons authorised by licences or exemptions to <sup>F21</sup>distribute, supply or participate in the transmission of] electricity<sup>F22</sup>,<sup>F23</sup>to participate in the operation of electricity interconnectors<sup>F24</sup>or to provide a smart meter communication service] and the efficient use of electricity conveyed by distribution systems <sup>F25</sup>or transmission systems];
  - (b) to protect the public from dangers arising from the generation, transmission, distribution or supply of electricity <sup>F26</sup>or the provision of a smart meter communication service];
- <sup>F27</sup>(ba) .....

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(c) to secure a diverse and viable long-term energy supply, [F<sup>28</sup>and F<sup>29</sup> ... shall], in carrying out those functions, have regard to the effect on the environment of activities connected with the generation, transmission, distribution or supply of electricity [F<sup>26</sup>or the provision of a smart meter communication service].

[ In carrying out their respective functions under this Part in accordance with the F<sup>30</sup>(5A) preceding provisions of this section the Secretary of State and the Authority must each have regard to—

- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed; and
- (b) any other principles appearing to him or, as the case may be, it to represent the best regulatory practice.]

[ In subsection (1A)—

F<sup>31</sup>(5B) “emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);

“electricity-supply emissions” in relation to emissions of a targeted greenhouse gas, means any such emissions (wherever their source) that are wholly or partly attributable to, or to commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors;

“targeted greenhouse gases” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).]

(6) In [F<sup>32</sup>subsections [F<sup>33</sup>(1C),] (3) and (4) references to consumers include] both existing and future consumers.

(7) In this section and sections 3B and 3C, references to functions of the Secretary of State or the Authority under this Part include a reference to functions under the Utilities Act 2000 which relate to electricity conveyed by distribution systems [F<sup>34</sup>or transmission systems].

(8) In this Part, unless the context otherwise requires—

“exemption” means an exemption granted under section 5;

“licence” means a licence under section 6 and “licence holder” shall be construed accordingly.]

#### Textual Amendments

- F4** S. 3A substituted for s. 3 (20.12.2000) by 2000 c. 27, s. 13; S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F5** Words in s. 3A(1) inserted (26.1.2009) by Energy Act 2008 (c. 32), ss. 83(2)(a), 110(2); S.I. 2009/45, art. 2(d)(i)
- F6** Words in s. 3A(1) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by Energy Act 2004 (c. 20), s. 179(2)(3)(a), 198(2); S.I. 2005/2965, art. 3
- F7** Words in s. 3A(1) omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), ss. 17(2), 38(3)
- F8** Ss. 3A(1A)-(1C) inserted (8.6.2010) by Energy Act 2010 (c. 27), ss. 17(3), 38(3)
- F9** Word in s. 3A(1A)(a) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 27(a)
- F10** S. 3A(1A)(c) and preceding word inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 27(b)
- F11** Words in s. 3A(2) substituted (8.6.2010) by Energy Act 2010 (c. 27), ss. 17(4)(a), 38(3)

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- F12** Words in s. 3A(2)(b) substituted (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 190(3)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- F13** Words in s. 3A(2)(b) substituted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), **ss. 102(6)**, 110(2)
- F14** Words in s. 3A(2)(b) substituted (8.6.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 17(4)(b)**, 38(3)
- F15** Words in s. 3A(2)(b) substituted (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 65(1)**, 156(3)
- F16** S. 3A(2)(c) and preceding word inserted (26.1.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 83(2)(b)**, 110(2); S.I. 2009/45, art. 2(d)(i)
- F17** Words in s. 3A(3) substituted (8.6.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 17(5)**, 38(3)
- F18** S. 3A(4)(b)(i) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 98** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F19** Words in s. 3A(5) substituted (8.6.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 17(6)(a)**, 38(3)
- F20** Words in s. 3A(5) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 138(3)**, 156(2)
- F21** Words in s. 3A(5)(a) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 19 para. 4**; S.I. 2004/2184, art. 2(2), Sch. 2
- F22** Word in S. 3A(5)(a) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **3(a)(i)**
- F23** Words in s. 3A(5)(a) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 147(2)(b)**, 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F24** Words in s. 3A(5)(a) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **3(a)(ii)**
- F25** Words in s. 3A(5)(a) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **s. 179(2)(3)(a)**, 198(2); S.I. 2005/2965, **art. 3**
- F26** Words in s. 3A(5) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **3(b)**
- F27** S. 3A(5)(ba) repealed (26.1.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 83(2)(c)**, 110(2), **Sch. 6**; S.I. 2009/45, art. 2(d)(bb)(e)(vi)(i)
- F28** Words in s. 3A(5) substituted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 83(b)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F29** Words in s. 3A(5) omitted (8.6.2010) by virtue of [Energy Act 2010 \(c. 27\)](#), **ss. 17(6)(b)**, 38(3)
- F30** S. 3A(5A) inserted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 178**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1
- F31** S. 3A(5B) inserted (8.6.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 17(7)**, 38(3)
- F32** Words in s. 3A(6) substituted (26.1.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 83(2)(d)**, 110(2); S.I. 2009/45, art. 2(d)(i)
- F33** Word in s. 3A(6) inserted (8.6.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 17(8)**, 38(3)
- F34** Words in s. 3A(7) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **s. 179(2)(3)(a)**, 198(2); S.I. 2005/2965, **art. 3**

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

- C7** Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C8** S. 3A: transfer of functions (23.3.2005) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, **Sch.** (with art. 6)
- C9** Ss. 3A-3D applied (21.8.2006) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), **ss. 8(6)**, 28(1)
- C10** Ss. 3A-3D applied (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), **ss. 102(4)**, 110(2)
- C11** Ss. 3A-3D applied (8.4.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 30(2)**, 38(1)
- C12** Ss. 3A-3D applied (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 78(2)**, 121(3)
- C13** Ss. 3A-3D applied (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 98(14)**, 121(3)

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- C14** Ss. 3A-3D applied (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
- C15** Ss. 3A-3D applied (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 39**, 156(3)
- C16** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 141(2)**, 156(2)
- C17** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 53**, 156(2)
- C18** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 136(2), 156(2)
- C19** [Ss. 3A-3D](#) applied (23.7.2018) by [Smart Meters Act 2018 \(c. 14\)](#), **ss. 6(13)**, 14(5)

#### Marginal Citations

- M1** 1986 c. 44.  
**M2** 1991 c. 56.

### [<sup>F35</sup>3B Guidance on social and environmental matters.

- (1) The Secretary of State shall from time to time issue guidance about the making by the Authority of a contribution towards the attainment of any social or environmental policies set out or referred to in the guidance.
- (2) The Authority shall, in carrying out its functions under this Part, have regard to any guidance issued under this section.
- (3) Before issuing guidance under this section the Secretary of State shall consult—
  - (a) the Authority;
  - [<sup>F36</sup>(b) Citizens Advice;
  - (ba) Citizens Advice Scotland];
  - (c) licence holders; and
  - (d) such other persons as the Secretary of State considers it appropriate to consult in relation to the guidance.
- (4) A draft of any guidance proposed to be issued under this section shall be laid before each House of Parliament.
- (5) Guidance shall not be issued under this section until after the period of forty days beginning with—
  - (a) the day on which the draft is laid before each House of Parliament; or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (6) If, before the end of that period, either House resolves that the guidance should not be issued, the Secretary of State must not issue it.
- (7) In reckoning any period of forty days for the purposes of subsection (5) or (6), no account shall be taken of any time during which—
  - (a) Parliament is dissolved or prorogued; or
  - (b) both Houses are adjourned for more than four days.
- (8) The Secretary of State shall arrange for any guidance issued under this section to be published in such manner as he considers appropriate.]

#### Textual Amendments

- F35** S. 3B inserted (20.12.2000) by [2000 c. 27, s. 14](#); S.I. 2000/3343, art. 2, [Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by S.I. 2001/1780, [art. 2](#))

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**F36** S. 3B(3)(b)(ba) substituted for s. 3B(3)(b) (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(2)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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

- C7** Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C9** Ss. 3A-3D applied (21.8.2006) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), **ss. 8(6)**, 28(1)
- C10** Ss. 3A-3D applied (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), **ss. 102(4)**, 110(2)
- C11** Ss. 3A-3D applied (8.4.2010) by [Energy Act 2010 \(c. 27\)](#), **ss. 30(2)**, 38(1)
- C12** Ss. 3A-3D applied (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 78(2)**, 121(3)
- C13** Ss. 3A-3D applied (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 98(14)**, 121(3)
- C14** Ss. 3A-3D applied (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
- C15** Ss. 3A-3D applied (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 39**, 156(3)
- C16** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 141(2)**, 156(2)
- C17** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 53**, 156(2)
- C18** Ss. 3A-3D applied (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 136(2), 156(2)
- C19** [Ss. 3A-3D](#) applied (23.7.2018) by [Smart Meters Act 2018 \(c. 14\)](#), **ss. 6(13)**, 14(5)

[<sup>F37</sup>**3C** **Health and safety.**

- (1) The Secretary of State and the Authority shall consult [<sup>F38</sup>—
- (a) the Health and Safety Executive about all electricity safety issues, and
  - (b) the Office for Nuclear Regulation about all electricity safety issues relating to nuclear sites (within the meaning of Part 3 of the Energy Act 2013),
- which may be relevant to the carrying out of their respective functions under this Part.]
- (2) The Secretary of State may require the Authority also to consult him about electricity safety issues of particular descriptions.
- (3) The Secretary of State and the Authority shall, in carrying out their respective functions under this Part, take into account any advice given by [<sup>F39</sup>the Health and Safety Executive ] [<sup>F40</sup>or the Office for Nuclear Regulation] about any electricity safety issue (whether or not in response to consultation under subsection (1)).
- (4) The Authority shall, in carrying out its functions under this Part, take into account any advice given by the Secretary of State about any electricity safety issue (whether or not in response to consultation under subsection (2)).
- (5) For the purposes of this section an electricity safety issue is anything concerning the generation, transmission, distribution or supply of electricity which may affect the health and safety of—
- (a) members of the public; or
  - (b) persons employed in connection with any of those activities.]

**Textual Amendments**

**F37** S. 3C inserted (20.12.2000) by [2000 c. 27, s. 15](#); S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-15](#)) (as amended by S.I. 2001/1780, **art. 2**)

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- F38** Words in s. 3C(1) substituted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 61(2)**; S.I. 2014/251, art. 4
- F39** Words in s. 3C(1)(3) substituted (1.4.2008) by The Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)
- F40** Words in s. 3C(3) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 61(3)**; S.I. 2014/251, art. 4

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

- C7** Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C9** Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)
- C10** Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)
- C11** Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)
- C12** Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)
- C13** Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)
- C14** Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
- C15** Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)
- C16** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
- C17** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
- C18** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 136(2)**, 156(2)
- C19** **Ss. 3A-3D** applied (23.7.2018) by Smart Meters Act 2018 (c. 14), **ss. 6(13)**, 14(5)

#### [<sup>F41</sup>3D] Exceptions from sections 3A to 3C.

- (1) Section 3A does not apply in relation to the issuing by the Secretary of State of guidance under section 3B.
- (2) Sections 3A to 3C do not apply in relation to functions of the Secretary of State under [<sup>F42</sup>sections 36 to 37].
- (3) Sections 3A to 3C do not apply in relation to anything done by the Authority—
  - (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 43(3).
- (4) The Authority may nevertheless, when exercising any function under section 43(3), have regard to any matter in respect of which a duty is imposed by sections 3A to 3C (“a general matter”), if it is a matter to which [<sup>F43</sup>the CMA] could have regard when exercising that function (but that is not to be taken as implying that, in relation to functions mentioned in subsection (2), regard may not be had to any general matter).
- (5) The duties imposed by sections 3A to 3C do not affect the obligation of the Authority or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment, by virtue of any [<sup>F44</sup>EU] obligation or otherwise.)

#### Textual Amendments

- F41** S. 3D inserted (20.12.2000) by 2000 c. 27, s. 16; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, **art. 2**)

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- F42** Words in s. 3D substituted (1.3.2005) by Energy Act 2004 (c. 20), **ss. 99(3)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1
- F43** Words in s. 3D(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 62** (with art. 3)
- F44** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

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

- C7** Ss. 3A-3D applied (24.8.2004 for specified purposes, 5.10.2004 in so far as not already in force) by Energy Act 2004 (c. 20), **ss. 190(2)**, 198(2); S.I. 2004/2184, art. 2(1), Sch. 1; S.I. 2004/2575, art. 2(1), Sch. 1
- C9** Ss. 3A-3D applied (21.8.2006) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 8(6)**, 28(1)
- C10** Ss. 3A-3D applied (26.11.2008) by Energy Act 2008 (c. 32), **ss. 102(4)**, 110(2)
- C11** Ss. 3A-3D applied (8.4.2010) by Energy Act 2010 (c. 27), **ss. 30(2)**, 38(1)
- C12** Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 78(2)**, 121(3)
- C13** Ss. 3A-3D applied (18.12.2011) by Energy Act 2011 (c. 16), **ss. 98(14)**, 121(3)
- C14** Ss. 3A-3D applied (21.3.2012) by Energy Act 2011 (c. 16), **ss. 22(10)**, 121(1); S.I. 2012/873, art. 2(a)(v)
- C15** Ss. 3A-3D applied (18.12.2013) by Energy Act 2013 (c. 32), **ss. 39**, 156(3)
- C16** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 141(2)**, 156(2)
- C17** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), **ss. 53**, 156(2)
- C18** Ss. 3A-3D applied (18.2.2014) by Energy Act 2013 (c. 32), ss. 136(2), 156(2)
- C19** Ss. 3A-3D applied (23.7.2018) by Smart Meters Act 2018 (c. 14), **ss. 6(13)**, 14(5)
- C20** S. 3D(4) excluded (20.12.2000) by S.I. 2000/3343, **art. 10(1)(b)** (subject to transitional provisions in arts. 3-15)

#### **[<sup>F45</sup>3E Binding decisions of the Agency for the Cooperation of Energy Regulators and of the European Commission**

The Authority must carry out its functions under this Part in the manner that it considers is best calculated to implement, or to ensure compliance with, any binding decision of the Agency or the European Commission made under the Electricity Directive, the Electricity Regulation or the Agency Regulation in relation to electricity.]

#### **Textual Amendments**

- F45** S. 3E inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **33**

#### **[<sup>F46</sup>3F Authority to consult and cooperate with other authorities**

- (1) When carrying out its functions as designated regulatory authority for Great Britain the Authority must, wherever it thinks fit—
- (a) consult and cooperate with the Agency and designated regulatory authorities for Northern Ireland and other Member States;
  - (b) provide the Agency and the designated regulatory authorities for Northern Ireland and other Member States with information they may require in order

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- to carry out their functions under the Electricity Directive, the Electricity Regulation or the Agency Regulation as it applies in relation to electricity; and
- (c) consult relevant national authorities.
- (2) In exercising functions in accordance with subsection (1) the Authority must, wherever it thinks fit, cooperate with the designated regulatory authorities for Northern Ireland and other Member States within a region which includes Great Britain with a view, within that region, to—
- (a) the integration of national markets;
  - (b) the promotion and facilitation of cooperation between transmission system operators;
  - (c) the optimal management of electricity networks;
  - (d) the promotion of jointly managed cross-border trade in electricity and the allocation of cross-border capacity;
  - (e) enabling an adequate level of interconnection capacity;
  - (f) the coordination of the development of network codes; and
  - (g) the coordination of the regulation of electricity markets, including rules concerning the management of congestion of electricity networks.
- (3) In this section—
- “network code” means a network code developed under Article 6 of the Electricity Regulation and adopted by the European Commission;
- “region” includes a geographical area defined in accordance with Article 12(3) of the Electricity Regulation; and
- “relevant national authority” means any of the following—
- (a) <sup>F47</sup> ...
  - (b) the Office of Communications;
  - (c) [<sup>F48</sup>the CMA] ;
  - (d) the Water Services Regulation Authority.]

#### Textual Amendments

- F46** S. 3F inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), 35
- F47** Words in s. 3F(3) omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 63\(a\)](#) (with art. 3)
- F48** Words in s. 3F(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 63\(b\)](#) (with art. 3)

*Licensing of supply etc.*

#### 4 Prohibition on unlicensed supply etc.

- (1) A person who—
- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - [<sup>F49</sup>(b) participates in the transmission of electricity for that purpose;]

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- [<sup>F50</sup>(bb) distributes electricity for that purpose;]  
(c) supplies electricity to any premises, <sup>F51</sup> ...  
[<sup>F52</sup>(d) participates in the operation of an electricity interconnector][<sup>F53</sup>; or  
(e) provides a smart meter communication service,]  
shall be guilty of an offence unless he is authorised to do so by a licence <sup>F54</sup> ... .
- (2) A person guilty of an offence under this section shall be liable—  
(a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine.
- (3) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director.
- [<sup>F55</sup>(3A) In subsection (1)(b) above, the reference to a person who participates in the transmission of electricity is to a person who—  
(a) co-ordinates, and directs, the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, or  
(b) makes available for use for the purposes of such a transmission system anything which forms part of it.
- [ Subsection (3A) is subject to section 6F (offshore transmission during commissioning <sup>F56</sup>(3AA) period).]
- (3B) For the purposes of subsection (3A)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.]
- [<sup>F57</sup>(3C) A reference in this Part to participating in the operation of an electricity interconnector is a reference to—  
(a) co-ordinating and directing the flow of electricity into or through an electricity interconnector; or  
(b) making such an interconnector available for use for the conveyance of electricity;  
and a person is not to be regarded as participating in the transmission of electricity by reason only of activities constituting participation in the operation of an electricity interconnector.
- (3D) For the purposes of subsection (3C)(b), a person shall not be regarded as making something available just because he consents to its being made available by another.
- (3E) In this Part “electricity interconnector” means so much of an electric line or other electrical plant as—  
(a) is situated at a place within the jurisdiction of Great Britain; and  
(b) subsists wholly or primarily for the purposes of the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory.
- (3F) For the purposes of this section—  
(a) a place is within the jurisdiction of Great Britain if it is in Great Britain, in the territorial sea adjacent to Great Britain or in an area designated under section 1(7) of the Continental Shelf Act 1964; and  
(b) a place is within the jurisdiction of another country or territory if it is in that country or territory or in waters in relation to which authorities of that country or territory exercise jurisdiction.]

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[<sup>F58</sup>(3G) A reference in this Part to providing a smart meter communication service is a reference to making arrangements with each domestic supplier to provide a service, for such suppliers, of communicating relevant information to and from smart meters through which electricity is supplied to domestic premises.]

(4) In this Part, unless the context otherwise requires—

[<sup>F59</sup>“distribute”, in relation to electricity, means distribute by means of a distribution system, that is to say, a system which consists (wholly or mainly) of low voltage lines and electrical plant and is used for conveying electricity to any premises or to any other distribution system;]

[<sup>F60</sup>“generate”, in relation to electricity, means generate at a relevant place;]

[<sup>F61</sup>“supply”, in relation to electricity, means its supply to premises in cases where—

(a) it is conveyed to the premises wholly or partly by means of a distribution system, or

(b) (without being so conveyed) it is supplied to the premises from a substation to which it has been conveyed by means of a transmission system,

but does not include its supply to premises occupied by a licence holder for the purpose of carrying on activities which he is authorised by his licence to carry on;]

[<sup>F62</sup>“transmission”, in relation to electricity, means transmission by means of a transmission system;

“transmission system” means a system which—

(a) consists (wholly or mainly) of high voltage lines and electrical plant, and

(b) is used for conveying electricity from a generating station to a substation, from one generating station to another or from one substation to another.]

[<sup>F63</sup>(5) In this section—

“relevant place” means a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone; and

“system” means a system the whole or a part of which is at a relevant place;

and references in this section to premises are references to premises situated at a relevant place, or at a place that is not in a Renewable Energy Zone but is in an area designated under section 1(7) of the Continental Shelf Act 1964.]

[<sup>F64</sup>(6) In this section—

“domestic supplier” means an electricity supplier—

(a) who is authorised, in accordance with the conditions of a licence, to supply electricity to domestic premises; and

(b) who supplies electricity to domestic premises in accordance with that licence;

“external electronic communications network” means a network which—

(a) is an electronic communications network, within the meaning of section 32 of the Communications Act 2003; and

(b) does not form part of a smart meter;

“relevant information” means information relating to the supply of electricity; and

“smart meter” means—

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- (a) an electricity meter which can send and receive information using an external electronic communications network; or
- (b) an electricity meter and a device which is associated with or ancillary to that meter and which enables information to be sent to and received by the meter using an external electronic communications network.]

#### Textual Amendments

- F49** S. 4(1)(b) substituted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 135(2)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2
- F50** S. 4(1)(bb) inserted (1.10.2001) by 2000 c. 27, s. **28(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F51** Word in s. 4(1) omitted (19.9.2012) by virtue of [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **4(2)(a)** (with art. 38(1)-(3))
- F52** S. 4(1)(d) and preceding word inserted (14.8.2006) by [Energy Act 2004 \(c. 20\)](#), **ss. 145(2)**, 198(2); S.I. 2006/1964, art. 2, **Sch.**
- F53** S. 4(1)(e) and preceding word inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **4(2)(b)** (with art. 38(1)-(3))
- F54** Words in s. 4(1) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F55** S. 4(3A)(3B) inserted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 135(3)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2
- F56** S. 4(3AA) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 147(2)**, 156(2)
- F57** S. 4(3C)-(3F) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 145(3)**, 198(2); S.I. 2004/2575, art. 2(2), **Sch. 2**
- F58** S. 4(3G) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **4(3)**
- F59** S. 4(4): definition of “distribute” inserted (7.11.2000 for specified purposes, 20.12.2000 for further specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. **28(3)(a)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-12](#)); S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-15](#)) (as amended by S.I. 2001/1780, **art. 2**); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F60** Words in s. 4(4) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 89(1)**, 198(2); S.I. 2005/442, art. 2(1), **Sch. 1**; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
- F61** Words in s. 4(4) substituted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 179(1)**, 198(2); S.I. 2005/2965, art. 3
- F62** Words in s. 4(4) substituted (24.8.2004 for specified purposes, 1.9.2004 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 135(4)**, 198(2); S.I. 2004/2184, art. 2(1)(2), Sch. 1, Sch. 2
- F63** S. 4(5) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 89(2)**, 198(2); S.I. 2005/442, art. 2(1), **Sch. 1**; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
- F64** S. 4(6) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **4(4)**

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

- C21** S. 4(1)(a)(c) excluded by S.I. 1990/193, **art. 3(1)**
- C22** S. 4(1)(a) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(a)** (with art. 4(1)(2), Sch. 2)
- C23** S. 4(1)(bb) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(b)** (with art. 4(3)(4), Sch. 3)
- C24** S. 4(1)(c) excluded (1.10.2001) by S.I. 2001/3270, **art. 3(1)(c)** (with art. 4(5)(8), Sch. 4)

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**[<sup>F65</sup> Exemptions from prohibition.**

- (1) The Secretary of State may by order grant exemption from paragraph (a), (b), (bb), [<sup>F66</sup>(c), (d) or (e)] of section 4(1)—
  - (a) either to a person or to persons of a class;
  - (b) either generally or to such extent as may be specified in the order; and
  - (c) either unconditionally or subject to such conditions as may be so specified.
- (2) Before making an order under subsection (1) the Secretary of State shall give notice—
  - (a) stating that he proposes to make such an order and setting out the terms of the proposed order;
  - (b) stating the reasons why he proposes to make the order in the terms proposed; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,

and shall consider any representations which are duly made in respect of the proposals and not withdrawn.
- (3) The notice required by subsection (2) shall be given—
  - (a) by serving a copy of it on the Authority [<sup>F67</sup>, Citizens Advice and Citizens Advice Scotland] ; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed order.
- (4) Notice of an exemption granted to a person shall be given—
  - (a) by serving a copy of the exemption on him; and
  - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (5) Notice of an exemption granted to persons of a class shall be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of—
  - (a) persons of that class; and
  - (b) other persons who may be affected by it.
- (6) An exemption may be granted—
  - (a) indefinitely; or
  - (b) for a period specified in, or determined by or under, the exemption.
- (7) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption—
  - (a) to comply with any direction given by the Secretary of State or the Authority as to such matters as are specified in the exemption or are of a description so specified;
  - (b) except in so far as the Secretary of State or the Authority consents to his doing or not doing them, not to do or to do such things as are specified in the exemption or are of a description so specified; and

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- (c) to refer for determination by the Secretary of State or the Authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (8) The Secretary of State may by order revoke an order by which an exemption was granted to a person or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (9) The Secretary of State may by order revoke an order by which an exemption was granted to persons of a class or vary an order by which more than one exemption was so granted so as to terminate any of the exemptions—
- (a) in accordance with any provision of the order by which the exemption was granted; or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (10) The Secretary of State may by direction withdraw an exemption granted to persons of a class from any person of that class—
- (a) at the person's request;
  - (b) in accordance with any provision of the order by which the exemption was granted; or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (11) Before—
- (a) making an order under subsection (8)(b) or (c) or (9); or
  - (b) giving a direction under subsection (10)(b) or (c),
- the Secretary of State shall consult the Authority and give notice of his proposal to do so (with reasons) and of a period within which representations may be made to him.
- (12) The notice under subsection (11) shall be given—
- (a) where the Secretary of State is proposing to make an order under subsection (8)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
  - (b) where he is proposing to make an order under subsection (9), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted; and
  - (c) where he is proposing to give a direction under subsection (10)(b) or (c), by serving a copy of it on the person from whom he proposes to withdraw the exemption.]

#### Textual Amendments

**F65** S. 5 substituted (1.10.2001) by 2000 c. 27, s. 29; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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**F66** Words in s. 5(1) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **5**

**F67** Words in s. 5(3)(a) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(3)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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

**C25** S. 5: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of [S.I. 2000/3253](#), arts. 1(1), 2, **Sch.** (with art. 6)

**[<sup>F68</sup>5A Duties of distribution exemption holders**

Schedule 2ZA (which relates to the duties of distribution exemption holders) has effect.

**Textual Amendments**

**F68** Ss. 5A, 5B inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **21(2)**

**5B Duties of supply exemption holders**

Schedule 2ZB (which relates to the duties of supply exemption holders) has effect.]

**Textual Amendments**

**F68** Ss. 5A, 5B inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **21(2)**

**[<sup>F69</sup>6 Licences authorising supply, etc.**

(1) The Authority may grant any of the following licences—

(a) a licence authorising a person to generate electricity for the purpose of giving a supply to any premises or enabling a supply to be so given (“a generation licence”);

<sup>F70</sup>(b) a licence authorising a person to participate in the transmission of electricity for that purpose (“a transmission licence”);]

(c) a licence authorising a person to distribute electricity for that purpose (“a distribution licence”); <sup>F71</sup>...

(d) a licence authorising a person to supply electricity to premises (“a supply licence”) <sup>F72</sup>...

[ a licence authorising a person to participate in the operation of an electricity interconnector (“an interconnector licence”)]<sup>F74</sup>; or

(f) subject to subsection (1C), a licence authorising a person to provide a smart meter communication service (“a smart meter communication licence”).]

<sup>F75</sup>[ Subject to subsection (1B), the Secretary of State may grant a smart meter (1A) communication licence.

*Status: Point in time view as at 01/04/2019.*

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(1B) The Secretary of State may not grant a smart meter communication licence after 1 November 2018.

(1C) The first smart meter communication licence may only be granted by the Secretary of State.]

- (2) The same person may not be the holder of both a distribution licence and [<sup>F76</sup>—
- (a) a generation licence; or
  - (b) a supply licence.]

[ The same person may not be the holder of an interconnector licence and the holder of <sup>F77</sup>(2A) a licence falling within any of paragraphs (a) to (d) of subsection (1).]

[ A person may not be granted a smart meter communication licence unless the same <sup>F78</sup>(2B) person is at the same time granted a licence under section 7AB of the Gas Act 1986.]

- (3) A supply licence may authorise the holder to supply electricity—
- (a) to any premises;
  - (b) only to premises specified in the licence, or to premises of a description so specified; or
  - (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.

(4) The Authority may, with the consent of the holder of a supply licence, modify terms included in the licence in pursuance of subsection (3) so as to extend or restrict the premises to which the licence holder may give a supply of electricity.

(5) A distribution licence may authorise the holder to distribute electricity in any area, or only in an area specified in the licence.

(6) The Authority may, with the consent of the holder of a distribution licence, modify terms included in the licence in pursuance of subsection (5) so as to extend or restrict the area within which the licence holder may distribute electricity.

[ A transmission licence may authorise the holder to participate in the transmission of <sup>F79</sup>(6A) electricity in any area, or only in an area specified in the licence.

(6B) The Authority may, with the consent of the holder of a transmission licence, modify terms included in the licence in pursuance of subsection (6A) above.]

[ An interconnector licence authorising participation in the operation of an electricity <sup>F80</sup>(6C) interconnector—

- (a) must specify the interconnector or interconnectors in relation to which participation is authorised; and
- (b) may limit the forms of participation in the operation of an interconnector which are authorised by the licence.]

[<sup>F81</sup>(7) A licence, and any modification of a licence under subsection (4), (6) or (6B), shall be in writing.]

(8) A licence shall, unless previously revoked in accordance with any term of the licence, continue in force for such period as may be specified in or determined by or under the licence.

(9) In this Part—

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F82

“electricity distributor” means any person who is authorised by a distribution licence to distribute electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence;

F83

“electricity supplier” means any person who is authorised by a supply licence to supply electricity except where he is acting otherwise than for purposes connected with the carrying on of activities authorised by the licence.

[ In this section “premises” has the same meaning as in section 4. ]  
F84(10)

#### Textual Amendments

- F69** Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 30; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F70** S. 6(1)(b) substituted (1.9.2004) by Energy Act 2004 (c. 20), ss. 136(1), 198(2); S.I. 2004/2184, art. 2(2), Sch. 2
- F71** Word in s. 6(1)(c) repealed (1.12.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 23 Pt. 1; S.I. 2004/2575, art. 2(2), Sch. 2
- F72** Word in s. 6(1) omitted (19.9.2012) by virtue of The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 6(2)(a)
- F73** S. 6(1)(e) and preceding word inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 145(5), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F74** S. 6(1)(f) and preceding word inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 6(2)(b)
- F75** S. 6(1A)-(1C) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 6(3)
- F76** Words in s. 6(2) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 19
- F77** S. 6(2A) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 145(6), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F78** S. 6(2B) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 6(4)
- F79** S. 6(6A)(6B) inserted (1.9.2004) by Energy Act 2004 (c. 20), ss. 136(2), 198(2); S.I. 2004/2184, art. 2(2), Sch. 2
- F80** S. 6(6C) inserted (1.12.2004) by Energy Act 2004 (c. 20), ss. 145(7), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2
- F81** S. 6(7) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 19 para. 5; S.I. 2004/2184, art. 2(2), Sch. 2
- F82** Words in s. 6(9) repealed (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 23 Pt. 1; S.I. 2004/2184, art. 2(2), Sch. 2
- F83** Words in s. 6(9) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), Sch. 1 para. 3
- F84** S. 6(10) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2004 (c. 20), ss. 89(3), 198(2); S.I. 2005/442, art. 2(1), Sch. 1; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2

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

- C26** S. 6 applied (1.10.2001) by S.I. 2001/3266, art. 3(3)

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- C27** S. 6 modified (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 148(2)**, 198(2); S.I. 2004/2575, art. 2(2), [Sch. 2](#)
- C28** S. 6 applied (2.10.2014) by [The Clocaenog Forest Wind Farm Order 2014 \(S.I. 2014/2441\)](#), arts. 1, **4(2)** (with art. 33)
- C29** S. 6(1) modified (16.5.2001) by [2000 c. 27, s. 33\(1\)](#); S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#))
- C30** S. 6(1)(f) applied (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **38(2)**

## **[<sup>F85</sup>6A Procedure for licence applications.**

- (1) This section applies to any application—
- (a) for a licence [<sup>F86</sup>(but this is subject to subsection (1A))]; or
  - [<sup>F87</sup>(b) for the modification of a licence under section 6(4), (6) or (6B).]

[ At any time when regulations made under section 56FC are in force, this section does <sup>F88</sup>(1A) not apply to an application for a smart meter communication licence.]

- (2) The application shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (3) Within the prescribed period after the making of the application the applicant shall publish a notice of the application in the prescribed manner.
- (4) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—
- (a) stating that it proposes to refuse the application;
  - (b) stating the reasons why it proposes to refuse the application; and
  - (c) specifying the time within which representations with respect to the proposed refusal may be made,
- and shall consider any representations which are duly made and not withdrawn.
- (5) Where the Authority grants the licence, extension or restriction applied for, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant.
- (6) In this section “prescribed” means prescribed in regulations made by the Authority.
- (7) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.]

### **Textual Amendments**

- F85** Ss. 6, 6A, 6B substituted for s. 6 (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 30](#); S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F86** Words in s. 6A(1)(a) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **7(2)**
- F87** S. 6A(1)(b) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 19 para. 6**; S.I. 2004/2184, art. 2(2), [Sch. 2](#)

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**F88** S. 6A(1A) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **7(3)**

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

- C31** S. 6A excluded (2.6.2009) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2009 \(S.I. 2009/1340\)](#), regs. 1, **28(2)**
- C32** S. 6A disapplied (29.7.2010) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2010 \(S.I. 2010/1903\)](#), regs. 1, **30(2)** (with reg. 31)
- C33** Ss. 6A, 6B excluded (22.2.2013) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2013 \(S.I. 2013/175\)](#), regs. 1(1), **34(2)**
- C34** Ss. 6A, 6B restricted (3.8.2015) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2015 \(S.I. 2015/1555\)](#), regs. 1(1), **35(2)** (with reg. 2)
- C35** S. 6A(5) applied (with modifications) (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), ss. **148(3)**, 198(2); [S.I. 2004/2575](#), art. 2(2), Sch. 2

#### **[<sup>F89</sup>6B Applications for transmission licences.**

(1) This section applies to applications for a transmission licence (in addition to the requirements of section 6A).

[<sup>F90</sup>(2) The applicant shall give notice of the application to any person who holds a transmission licence and whose interests may be affected if the licence applied for is granted.]

(3) Before granting the transmission licence applied for, the Authority shall give notice—

- stating that it proposes to grant the licence;
- stating the reasons why it proposes to grant the licence; and
- specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) shall be given by publication in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.

(5) The Authority shall send a copy of a notice under subsection (3) to—

- the applicant;
- the Secretary of State; and
- any person who holds a transmission licence and whose [<sup>F91</sup>interests may be affected by the grant of the licence] to which the application relates.]

#### **Textual Amendments**

- F89** Ss. 6, 6A, 6B substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) for s. 6 by [2000 c. 27, s. 30](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F90** S. 6B(2) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 19 para. 7(2)**; [S.I. 2004/2184](#), art. 2(2), Sch. 2
- F91** Words in s. 6B(5)(c) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 19 para. 7(3)**; [S.I. 2004/2184](#), art. 2(2), Sch. 2

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

- C33** Ss. 6A, 6B excluded (22.2.2013) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2013 \(S.I. 2013/175\)](#), regs. 1(1), **34(2)**
- C34** Ss. 6A, 6B restricted (3.8.2015) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2015 \(S.I. 2015/1555\)](#), regs. 1(1), **35(2)** (with reg. 2)
- C36** S. 6B excluded (2.6.2009) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2009 \(S.I. 2009/1340\)](#), regs. 1, **28(2)**
- C37** S. 6B disapplied (29.7.2010) by [The Electricity \(Competitive Tenders for Offshore Transmission Licences\) Regulations 2010 \(S.I. 2010/1903\)](#), regs. 1, **30(2)** (with reg. 31)

[<sup>F92</sup>6C **Competitive tenders for offshore transmission licences**

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.
- (2) That provision may include—
- provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
  - provision for the inclusion in such a proposal of an invitation to apply for such a licence;
  - provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
  - provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section—
- may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and
  - may dispense with or supplement provision made in relation to applications for transmission licences by or under section 6A or 6B above.
- (4) The approval of the Secretary of State is required for the making of regulations under this section.
- (5) In this section—
- “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and
- “prescribed” means prescribed in or determined under regulations made by the Authority.
- (6) In subsection (5) “offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area.
- (7) In subsection (6) “offshore waters” means—
- waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - waters within an area designated under section 1(7) of the Continental Shelf Act 1964.]

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### Textual Amendments

**F92** S. 6C inserted (E.W.S.) (20.5.2009) by *Energy Act 2004* (c. 20), **ss. 92, 198(2)**; S.I. 2009/1269, art. 2

## [<sup>F93</sup>6D Section 6C: supplemental provision

- (1) The provision made by regulations under section 6C(1) may also include—
- (a) provision requiring a person within subsection (2), in relation to a tender exercise, to make payments to the Authority, in prescribed circumstances, in respect of the Authority's tender costs in relation to the exercise;
  - (b) provision requiring a person within subsection (2)(a) (“the relevant person”) in prescribed circumstances—
    - (i) to pay a deposit of a prescribed amount to the Authority, or to provide the Authority with security in a form approved by it, or
    - (ii) to make arrangements for a person approved by the Authority to pay to the Authority such a deposit or provide it with such security,
 in respect of any liability which the relevant person has, or may in future have, by virtue of paragraph (a);
  - (c) provision requiring the owner of a regulated asset, in a case where a transitional tender exercise has been held, to make a payment of a prescribed amount to the Authority in respect of any costs incurred by the Authority in connection with any assessment of the costs which have been, or ought to have been, incurred in connection with that asset;
  - (d) provision about the times at which payments are to be made under regulations made by virtue of paragraph (a) or (c) or deposits or other forms of security are to be provided under regulations made by virtue of paragraph (b);
  - (e) provision about—
    - (i) the circumstances in which a payment made in accordance with regulations made by virtue of paragraph (a) is to be repaid (wholly or in part);
    - (ii) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
    - (iii) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with regulations made by virtue of paragraph (b) is to be released or forfeited (wholly or in part);
  - (f) provision about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this subsection, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (2) The persons within this subsection, in relation to a tender exercise, are—
- (a) the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held;
  - (b) any person who submits an application for the offshore transmission licence to which the tender exercise relates.
- (3) For the purposes of subsection (2)(a) a person makes a connection request when the person—

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- (a) makes an application to the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
  - (b) before the coming into force of section 180 of the Energy Act 2004 (meaning of “high voltage line”), makes an application to the holder of a distribution licence (in accordance with any provision made by the licence) for an offer of connection to and use of a system in circumstances where the application is for connection to and use of that system by a system—
    - (i) which was a distribution system at the time the application was made (or would have been had it been in existence at that time), and
    - (ii) which consists (wholly or mainly) of electric lines of a nominal voltage of 132 kilovolts.
- (4) A person (“P”) is to be treated as within subsection (2)(a) if—
- (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (3)(a) or (b), and
  - (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (5) Where regulations are made by virtue of subsection (1)(a) or (b), regulations made by virtue of subsection (1)(e) must ensure that, as soon as reasonably practicable after a tender exercise is finished, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of—
- (a) any fees under section 6A(2) in respect of applications for the offshore transmission licence to which the tender exercise relates,
  - (b) any payments made in accordance with regulations made by virtue of subsection (1)(a) and not repaid, and
  - (c) the value of any security forfeited in accordance with regulations made by virtue of subsection (1)(e)(iii),
- does not exceed the Authority's tender costs.
- (6) Where regulations under section 6C—
- (a) restrict the making of applications for offshore transmission licences, or
  - (b) operate so as to prevent an application from being considered or further considered, if the applicant does not meet one or more prescribed requirements,
- such regulations may make provision enabling a person to apply to the Authority for a decision as to the effect of any such restriction or requirement if the person were to make an application for such a licence.
- (7) Regulations made by virtue of subsection (6) may enable the Authority to charge a person who makes such an application a prescribed fee for any decision given in response to it.
- (8) In this section—
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system—
- (a) by means of which the transmission of electricity takes place, and
  - (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));

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“offshore transmission licence” has the same meaning as in section 6C;

“prescribed” has the same meaning as in that section;

“regulated asset”, in relation to a tender exercise, means an asset which the person granted the offshore transmission licence requires in order to enable that person to comply with the obligations under the licence;

“successful bidder”, in relation to a tender exercise, means the person to whom, as a result of that exercise, the offshore transmission licence has been, or is to be, granted;

“tender costs”, in relation to a tender exercise, means—

- (a) any costs incurred or likely to be incurred by the Authority for the purposes of the exercise, and
- (b) such proportion as the Authority considers appropriate of the costs which—
  - (i) have been, or are likely to be, incurred by it under or for the purposes of section 6C or of regulations under that section, and
  - (ii) are not directly attributable to a particular tender exercise;

“tender exercise” means the steps taken in accordance with regulations under section 6C with a view to determining to whom a particular offshore transmission licence is to be granted;

“transitional tender exercise” means a tender exercise in relation to which paragraph 1(1) of Schedule 2A applies.

- (9) Any sums received by the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.

#### Textual Amendments

**F93** Ss. 6D, 6E inserted (20.5.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 44(2)**, 110(2); S.I. 2009/1270, art. 2

### 6E Property schemes in respect of offshore transmission licences

Schedule 2A (which provides for property schemes in connection with grants of offshore transmission licences) shall have effect.]

#### Textual Amendments

**F93** Ss. 6D, 6E inserted (20.5.2009) by [Energy Act 2008 \(c. 32\)](#), **ss. 44(2)**, 110(2); S.I. 2009/1270, art. 2

### [<sup>F94</sup>6F Offshore transmission during commissioning period

- (1) For the purposes of this Part a person is not to be regarded as participating in the transmission of electricity if the following four conditions are met.
- (2) The first condition is that the transmission takes place over an offshore transmission system (“the system”) or anything forming part of it.
- (3) The second condition is that the transmission takes place during a commissioning period (see section 6G).
- (4) The third condition is that—

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- (a) a request has been made to the Authority in accordance with the tender regulations for a tender exercise to be held for the granting of an offshore transmission licence in respect of the system,
  - (b) the Authority has determined in accordance with those regulations that the request relates to a qualifying project, and
  - (c) the system, or anything forming part of it, has not been transferred as a result of the exercise to the successful bidder.
- (5) The fourth condition is that—
- (a) the person who is the developer in relation to the tender exercise is also the operator of a relevant generating station, and
  - (b) the construction or installation of the system is being or has been carried out by or on behalf of, or by or on behalf of a combination of, any of the following—
    - (i) the person mentioned in paragraph (a);
    - (ii) a body corporate associated with that person at any time during the period of construction or installation;
    - (iii) a previous developer;
    - (iv) a body corporate associated with a previous developer at any time during the period of construction or installation.
- (6) For the purposes of subsection (1), it does not matter whether or not the person mentioned in that subsection is the developer in relation to the tender exercise.
- (7) For the purposes of subsection (5)(b)(iii) and (iv), a person is a “previous developer” in relation to the system if—
- (a) the person does not fall within subsection (5)(a), but
  - (b) at any time during the period of construction or installation, the person was the developer in relation to the tender exercise.
- (8) In this section—
- “associated”, in relation to a body corporate, is to be construed in accordance with paragraph 37 of Schedule 2A;
  - “developer”, in relation to a tender exercise, means any person within section 6D(2)(a) (person who makes the connection request, including any person who is to be so treated by virtue of section 6D(4));
  - “offshore transmission” has the meaning given by section 6C(6);
  - “offshore transmission licence” has the meaning given by section 6C(5);
  - “offshore transmission system” means a transmission system used for purposes connected with offshore transmission;
  - “operator”, in relation to a generating station, means the person who is authorised to generate electricity from that station—
    - (a) by a generation licence granted under section 6(1)(a), or
    - (b) in accordance with an exemption granted under section 5(1);
  - “qualifying project” is to be construed in accordance with the tender regulations;
  - “successful bidder” and “tender exercise” have the same meanings as in section 6D;
  - “relevant generating station”, in relation to an offshore transmission system, means a generating station that generates electricity transmitted over the system;

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

#### Textual Amendments

**F94** Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 147(3)**, 156(2)

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

- (1) For the purposes of section 6F(3), transmission over an offshore transmission system (or anything forming part of it) takes place during a “commissioning period” if it takes place at any time—
  - (a) before a completion notice is given in respect of the system, or
  - (b) during the period of 18 months beginning with the day on which such a notice is given.
- (2) A “completion notice”, in relation to a transmission system, is a notice which—
  - (a) is given to the Authority by the relevant co-ordination licence holder in accordance with the co-ordination licence, and
  - (b) states that it would be possible to carry on an activity to which section 4(1)(b) applies by making available for use that system.
- (3) The Secretary of State may by order amend subsection (1) so as to specify a period of 12 months in place of the period of 18 months.
- (4) An order under subsection (3) may be made only so as to come into force during the period—
  - (a) beginning 2 years after the day on which section 147 of the Energy Act 2013 comes into force, and
  - (b) ending 5 years after that day.
- (5) An amendment made by an order under subsection (3) does not apply in relation to any transmission of electricity over a transmission system if—
  - (a) but for the making of the order, the person participating in the transmission would, by virtue of section 6F, have been regarded as not participating in the transmission, and
  - (b) the determination mentioned in subsection (4)(b) of that section in relation to the system was made on or before the day on which the order is made.
- (6) In this section—
 

“co-ordination licence” has the same meaning as in Schedule 2A (see paragraph 38(1) of that Schedule);

“relevant co-ordination licence-holder” has the meaning given by paragraph 13(4) of Schedule 2A.

#### Textual Amendments

**F94** Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 147(3)**, 156(2)

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

- (1) The Authority may—

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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

#### Textual Amendments

**F94** Ss. 6F-6H inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 147(3), 156(2)**

## 7 Conditions of licences: general.

- (1) A licence may include—
  - (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the [<sup>F95</sup>grantor] to be requisite or expedient having regard to the duties imposed by [<sup>F96</sup>section 3 above]; and
  - (b) conditions requiring the rendering to the [<sup>F97</sup>Authority] of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.
- (2) Without prejudice to the generality of paragraph (a) of subsection (1) above, conditions included in [<sup>F98</sup>a transmission licence or distribution licence] by virtue of that paragraph—
  - (a) may require the licence holder to enter into agreements with other persons for the use of any electric lines and electrical plant of his (wherever situated and whether or not used for the purpose of carrying on the activities authorised by the licence) for such purposes as may be specified in the conditions; and
  - (b) may include provision for determining the terms on which such agreements are to be entered into.

[<sup>F99</sup>(2A) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a transmission licence by virtue of that paragraph may—

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- (a) require the licence holder not to carry on an activity which he would otherwise be authorised by the licence to carry on, or
  - (b) restrict where he may carry on an activity which he is authorised by the licence to carry on.]
- (3) [<sup>F100</sup>Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph] may require the licence holder—
- (a) to comply with any direction given by the [<sup>F101</sup>Authority or Secretary of State] as to such matters as are specified in the licence or are of a description so specified;
  - (b) except in so far as the [<sup>F101</sup>Authority or Secretary of State] consents to his doing or not doing them, not to do or to do such things as are specified in the licence or are of a description so specified;
  - (c) to refer for determination by the [<sup>F101</sup>Authority or Secretary of State] such questions arising under the licence [<sup>F102</sup>, or under any document referred to in the licence,] as are specified in the licence or are of a description so specified; and
  - (d) to refer for approval by the [<sup>F101</sup>Authority or Secretary of State] such things falling to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.
- [<sup>F103</sup>(3A) Conditions included in a transmission licence or a distribution licence by virtue of subsection (1)(a) may require the holder, in such circumstances as are specified in the licence—
- (a) so to increase his charges for the transmission or distribution of electricity as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such licence holders as may be so determined.]

[<sup>F104</sup>(3B) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3C) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where a person holds such a licence (the “licence holder”), and another person has applied or is considering whether to apply for a smart meter communication licence (“the applicant”).

(3C) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the Secretary of State or the Authority requiring the licence holder to provide to the applicant—

    - (a) information in relation to the activities authorised by the licence; or
    - (b) such other assistance as may be reasonably required by the applicant, including access to any facilities or equipment being used in connection with the activities authorised by the licence, in order that the applicant can—
      - (i) determine whether to apply for a licence; or
      - (ii) take part in a competition for a licence.

(3D) Subject to subsection (3F) and without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (3E) may be included in a smart meter communication licence by virtue of that paragraph, in respect of circumstances where such a licence held by a person (the “first licensee”) will cease to have effect, and another such licence is to be granted or has been granted to a different person (the “second licensee”).

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- (3E) The conditions in this subsection are conditions which require compliance with a direction given by the Secretary of State or the Authority requiring—
- (a) the transfer of property, rights or liabilities from the first licensee to the second licensee;
  - (b) the creation of rights in relation to property, rights or liabilities in favour of the second licensee;
  - (c) the creation of other rights and liabilities as between the first and second licensee;
  - (d) the first or second licensee to enter into a written agreement with each other, or the first licensee to execute an instrument of another kind in favour of the second licensee;
  - (e) the first or second licensee to pay compensation to the other, or to any third party who is affected by any of the matters referred to in paragraphs (a) to (d).
- (3F) Conditions included in a licence by virtue of subsection (3D) must provide that the licensee does not have a duty to comply with a direction of the kind referred to in subsection (3E) unless, in relation to that direction, the following conditions have been satisfied prior to it being given—
- (a) the Secretary of State or the Authority (as appropriate) has given written notice to the first licensee, the second licensee and any other person who would potentially be affected by the direction, including a copy of the proposed direction and inviting them to submit written representations, giving a minimum period of 21 days in which those representations can be made; and
  - (b) after the end of the period set out in the notice under paragraph (a), the Secretary of State or the Authority (as appropriate) has considered those representations and determined that—
    - (i) it is appropriate in all the circumstances that the proposed direction is given; and
    - (ii) the arrangements of a type referred to in paragraphs (a) to (d) of subsection (3E) in the direction are necessary or expedient for the operational purposes of the second licensee, or are agreed by the first licensee and the second licensee to be necessary or expedient for those purposes.
- (3G) For the purposes of subsection (3F), the operational purposes of the second licensee are the purposes of performing any functions which the second licensee has, or will have—
- (a) under or by virtue of the smart meter communication licence which has been, or is to be, granted; or
  - (b) under or by virtue of any enactment, in the second licensee's capacity as holder of that licence.]
- (4) Conditions included in a licence by virtue of subsection (1)(a) above may—
- (a) instead of specifying or describing any contracts or agreements to which they apply, refer to contracts or agreements designated (whether before or after the imposition of the conditions) by the Secretary of State or the Director; and
  - (b) instead of containing any provisions which fall to be made, refer to provisions set out in documents so designated and direct that those provisions shall have such effect as may be specified in the conditions.

[<sup>F105</sup>(5) Conditions included in a licence may contain provision for the conditions—

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- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions; or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.]
- (6) Any provision included by virtue of subsection (5) above in a licence shall have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- [<sup>F106</sup>(6A) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.]
- (7) Any sums received by the [<sup>F107</sup>Authority] in consequence of the provisions of any condition of a licence shall be paid into the Consolidated Fund.

#### Textual Amendments

- F95** Word in s. 7(1)(a) substituted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **8(2)**
- F96** Words in s. 7(1)(a) substituted (20.12.2000) by [2000 c. 27, s. 32\(2\)](#); [S.I. 2000/3343](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780](#), **art. 2**)
- F97** Words in s. 7(1) substituted (20.12.2000) by [2000 c. 27, s. 32\(2\)](#); [S.I. 2000/3343](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780](#), **art. 2**)
- F98** Words in s. 7(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(3\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F99** S. 7(2A) inserted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 136(3)**, 198(2); [S.I. 2004/2184](#), art. 2(2), **Sch. 2**
- F100** Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(4\)\(a\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F101** Words in s. 7(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(4\)\(b\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F102** Words in s. 7(3)(c) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(4\)\(c\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F103** S. 7(3A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(5\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F104** S. 7(3B)-(3G) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **8(3)**
- F105** S. 7(5) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(6\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F106** S. 7(6A) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(7\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))
- F107** Words in s. 7(7) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by [2000 c. 27, s. 32\(8\)](#); [S.I. 2001/1781](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-10](#)); [S.I. 2001/3266](#), art. 2, **Sch.** (subject to transitional provisions in [arts. 3-20](#))

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

**C38** S. 7 applied (1.10.2001) by S.I. 2001/3266, art. 3(3)

**C39** S. 7 applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), ss. 148(3), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

[<sup>F108</sup>7A **Transfer of licences.**

- (1) A licence—
  - (a) is capable of being transferred by the licence holder, with the consent of the Authority, in accordance with this section but subject to any term as to transfer contained in the licence;
  - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which he is authorised by the licence to carry on).
- (4) Such consent may be given subject to compliance with such modification or other conditions as the Authority considers appropriate.
- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make as respects so much of the licence as is proposed to be retained by the transferor provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) In deciding whether to give its consent to a proposed transfer, the Authority shall apply the same criteria as it would apply if the Authority were deciding whether—
  - (a) in the case of a general transfer, to grant a corresponding licence to the transferee; or
  - (b) in the case of a partial transfer—
    - (i) to grant to the transferee a licence corresponding to so much of the licence as is proposed to be transferred; and
    - (ii) to grant to the transferor a licence corresponding to so much of the licence as is proposed to be retained.
- (7) The Authority shall give the Secretary of State not less than 28 days' notice of any proposal to impose a modification condition.
- (8) If, before the expiry of the time specified in a notice under subsection (7), the Secretary of State directs the Authority not to impose the condition, the Authority shall comply with the direction.
- (9) Before giving consent to the transfer of a licence, the Authority shall give notice—
  - (a) stating that it proposes to grant consent to the transfer;
  - (b) stating the reasons why it proposes to give consent; and
  - (c) specifying the time from the date of publication of the notice (not being less than two months) within which representations or objections with respect to the transfer may be made,

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and shall consider any representations or objections that are duly made and not withdrawn.

(10) A notice under subsection (9) shall be given by publishing the notice in such manner as the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.

<sup>F109</sup> [ Subject to subsection (10C), the Authority shall, following consideration of any (10A) representations or objections under subsection (9), give the Secretary of State not less than 28 days' notice of any proposal to give consent to the transfer of the whole or any part of a smart meter communication licence.

(10B) If, before the expiry of the time specified in a notice under subsection (10A), the Secretary of State directs the Authority not to give consent, the Authority shall comply with that direction.

(10C) Where the Secretary of State does not give a direction under subsection (10B), the Authority may give consent to the transfer of the licence after—

- (a) the expiry of the time specified in the notice under subsection (10A); or
- (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the Authority that no direction will be given under subsection (10B) in relation to the notice.

(10D) Subsections (10A) to (10C) do not apply after [<sup>F110</sup>1 November 2023].]

(11) A purported transfer of a licence shall be void—

- (a) if the licence is not capable of transfer or the Authority has not given its consent;
- (b) if the purported transfer is in breach of a condition of the licence; or
- (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the Authority's consent is given.

<sup>F111</sup> [ A smart meter communication licence may not be transferred to a person unless a (11A) licence granted under section 7AB of the Gas Act 1986 is also transferred to the same person at the same time.]

(12) In this section—

“transfer” includes any form of transfer or assignment or, in Scotland, assignation;

“modification condition” means a condition requiring or otherwise providing for the making of modifications to the conditions of a licence.]

#### Textual Amendments

**F108** S. 7A inserted (1.10.2001) by 2000 c. 27, s. 41; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F109** Ss. 7A(10A)-(10D) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 9(2)

**F110** Words in s. 7A(10D) substituted (23.5.2018) by Smart Meters Act 2018 (c. 14), ss. 1(2)(a), 14(2)

**F111** S. 7A(11A) inserted (19.9.2012) by The Electricity and Gas (Smart Meters Licensable Activity) Order 2012 (S.I. 2012/2400), arts. 1, 9(3)

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## [<sup>F112</sup>7B Uniform prices etc. in certain areas of Scotland.

- (1) The Secretary of State may, by an order made under this section, require the holder of—
  - (a) a transmission licence; or
  - (b) a distribution licence,to apply in respect of the use of the transmission or, as the case may be, distribution system, or any part of the system, in a specified area charges which do not distinguish (whether directly or indirectly) between users in different parts of the area.
- (2) The Secretary of State may, by such an order, require the holder of a supply licence—
  - (a) to charge prices; or
  - (b) to offer conditions of contract,in respect of a comparable supply of electricity in a specified area which do not distinguish (whether directly or indirectly) between consumers in different parts of the area.
- (3) The Secretary of State shall not specify in such an order any particular or maximum charge or price or any particular condition of contract.
- (4) Such an order may make different provision for different cases or descriptions of case.
- (5) For the purposes of this section—
  - (a) a specified area is an area of Scotland specified in such an order; and
  - (b) supplies of electricity are comparable if they are—
    - (i) at the same or similar voltages; and
    - (ii) are in accordance with the same or similar demand characteristics.]

### Textual Amendments

**F112** S. 7B inserted (1.10.2001) by 2000 c. 27, s. 72; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 8 Conditions for funding certain companies engaged in nuclear generation in Scotland.

- (1) Without prejudice to section 7(1)(a) above, it may be a condition of a licence granted to a company (“the licence holder”) that it shall from time to time provide any company to which subsection (2) below applies, comes to apply or has at any time applied with such funds as may be determined by or under the condition in respect of such of that company’s liabilities as may be so determined.
- (2) This subsection applies to any company engaging in the operation of a nuclear generating station in Scotland while—
  - (a) deemed for the purposes of the <sup>M3</sup>Companies Act 1985 to be a subsidiary of the licence holder; or
  - (b) a related company of the licence holder (as defined in paragraph 92 of Schedule 4 to that Act).
- (3) Subsection (3) of section 7 above applies in respect of a condition included in a licence by virtue of this section as it applies in respect of a condition so included by virtue of subsection (1)(a) of that section.

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### Marginal Citations

M3 1985 c. 6.

## [<sup>F113</sup>8A Standard conditions of licences.

(1) Subject to subsection (2), each condition which by virtue of section 33(1) of the Utilities Act 2000 is a standard condition for the purposes of any of the types of licence mentioned in [<sup>F114</sup>section 6(1)(a), (c) or (d) (that is to say, generation licences, distribution licences or supply licences)] shall be incorporated by reference in each licence of that type granted after the commencement of this section.

[ Subject to subsection (2), each condition which by virtue of section 137(3) of the  
<sup>F115</sup>(1A) Energy Act 2004 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 137(6) of that Act comes into force.]

[ Subject to subsection (2), each condition which by virtue of section 146 of the Energy  
<sup>F116</sup>(1B) Act 2004 is a standard condition for the purposes of interconnector licences shall be incorporated, by reference, in each interconnector licence granted on or after the commencement of subsection (6) of that section.]

(2) Subject to the following provisions of this section, the Authority may, in granting a licence of any type, modify any of the standard conditions for licences of that type in its application to the licence to such extent as it considers requisite to meet the circumstances of the particular case.

(3) Before making any modifications under subsection (2), the Authority shall give notice—

- (a) stating that it proposes to make the modifications and setting out their effect;
- (b) stating the reasons why it proposes to make the modifications; and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(4) A notice under subsection (3) shall be given—

- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications; and
- (b) by sending a copy of the notice to the Secretary of State [<sup>F117</sup>, Citizens Advice and Citizens Advice Scotland].

(5) If, within the time specified in the notice under subsection (3), the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.

(6) The Authority shall not under subsection (2) make any modifications of a condition of a licence of any type unless it is of the opinion that the modifications are such that—

- (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences of that type; and

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- (b) no other holder of a licence of the same type would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence being modified).
- (7) The modification under subsection (2) of part of a condition of a licence shall not prevent any other part of the condition which is not so modified being regarded as a standard condition for the purposes of this Part.
- (8) In this section “modify” includes fail to incorporate and “modification” shall be construed accordingly.]

**Textual Amendments**

- F113** S. 8A inserted (1.10.2001) by 2000 c. 27, s. 33(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F114** Words in s. 8A(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), ss. 137(5), 198(2); S.I. 2004/2184, art. 2(2), Sch. 2
- F115** S. 8A(1A) inserted (1.9.2004) by Energy Act 2004 (c. 20), ss. 137(6), 198(2); S.I. 2004/2184, art. 2(2), Sch. 2
- F116** S. 8A(1B) inserted (1.4.2005) by Energy Act 2004 (c. 20), ss. 146(6), 198(2); S.I. 2005/877, art. 2(1), Sch. 1
- F117** Words in s. 8A(4)(b) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 5(4) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

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

- C40** S. 8A applied (with modifications) (1.12.2004) by Energy Act 2004 (c. 20), ss. 148(3), 198(2); S.I. 2004/2575, art. 2(2), Sch. 2

**9 General duties of licence holders.**

- [<sup>F118</sup>(1) It shall be the duty of an electricity distributor—
  - (a) to develop and maintain an efficient, co-ordinated and economical system of electricity distribution;
  - (b) to facilitate competition in the supply and generation of electricity.]
  - (2) It shall be the duty of the holder of a licence authorising him to [<sup>F119</sup>participate in the transmission of] electricity—
    - (a) to develop and maintain an efficient, co-ordinated and economical system of electricity transmission; and
    - (b) <sup>F120</sup> . . . , to facilitate competition in the supply and generation of electricity.
  - [<sup>F121</sup>(2A) Subsection (2)(a) shall not have effect to require the holder of a transmission licence which is subject to a condition of the kind mentioned in section 7(2A)(a) to carry on an activity which he would be authorised by the licence to carry on apart from the condition.]
  - <sup>F122</sup>(3) . . . . .
  - <sup>F122</sup>(4) . . . . .

*Status: Point in time view as at 01/04/2019.*

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### Textual Amendments

- F118** S. 9(1) substituted (1.10.2001) by 2000 c. 27, s. 50; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F119** Words in s. 9(2) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 8(2)**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F120** Words in s. 9(2)(b) repealed (1.10.2001) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F121** S. 9(2A) inserted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 8(3)**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F122** S. 9(3)(4) repealed (1.10.2001) by 2000 c. 27, ss. 71, 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### Modifications etc. (not altering text)

- C41** S. 9(1)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

## 10 Powers etc. of licence holders.

- (1) Subject to subsection (2) below, Schedule 3 to this Act (which provides for the compulsory acquisition of land) and Schedule 4 to this Act (which confers other powers and makes other provision) shall have effect—
- in relation to <sup>F123</sup>... [<sup>F124</sup>the holder of a transmission licence]; and
  - to the extent that his licence so provides, in relation to [<sup>F125</sup>an electricity distributor or] any other licence holder;
- and references in those Schedules to a licence holder shall be construed accordingly.
- (2) Where any provision of either of the Schedules mentioned in subsection (1) above is applied to a licence holder by his licence, it shall have effect subject to such restrictions, exceptions and conditions as may be included in the licence for the purpose of qualifying that provision as so applied or any power or right conferred by or under it.
- (3) [<sup>F126</sup>A generation licence] may provide that Schedule 4 to this Act shall have effect in relation to the licence holder as if—
- any reference to any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on included a reference to any purpose connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat; and
  - any reference to electric lines or electrical plant included a reference to pipes and associated works used or intended to be used for conveying heat so produced, and steam produced from and air and water heated by such heat;
- and in this subsection “associated works”, in relation to pipes, means any of the following connected with the pipes, namely, any valve, filter, stopcock, pump, meter, inspection chamber and manhole and such other works as may be prescribed.
- [<sup>F127</sup>(3A) Subsection (3) applies in relation to any purpose connected with the supply to any premises of any gas or liquid subjected to a cooling effect produced in association with electricity as it applies to a purpose mentioned in that subsection.]

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[<sup>F128</sup>(4) A transmission licence may provide that, where the licence is modified under section 6(6B)<sup>F129</sup>... or 11A above so as to reduce in any respect the area in which the licence holder may carry on activities, Schedule 4 to this Act shall have effect in relation to him as if any reference to the activities which he is authorised by his licence to carry on included a reference to the activities which he was previously so authorised to carry on.]

(5) The provisions of Schedule 5 to this Act (which provide for the acquisition of water rights for hydro-electric stations in Scotland) shall have effect.

#### Textual Amendments

- F123** Words in s. 10(1)(a) repealed (1.10.2001) by 2000 c. 27, s. 53(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F124** Words in s. 10(1)(a) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 19 para. 9(2); S.I. 2004/2184, art. 2(2), Sch. 2
- F125** Words in s. 10(1)(b) inserted (1.10.2001) by 2000 c. 27, s. 53(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F126** Words in s. 10(3) substituted (1.10.2001) by 2000 c. 27, s. 53(3); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F127** S. 10(3A) inserted (1.10.2001) by 2000 c. 27, s. 53(4); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F128** S. 10(4) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), Sch. 19 para. 9(3); S.I. 2004/2184, art. 2(2), Sch. 2
- F129** Word in s. 10(4) omitted (10.11.2011) by virtue of The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 45(1)

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

- C42** S. 10(1)(a)(2): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

[<sup>F130</sup>Electricity transmission and the operation of electricity interconnectors: independence

#### Textual Amendments

- F130** Ss. 10A-10O and cross-heading inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 5

### 10A Electricity transmission and the operation of electricity interconnectors: requirement for certain participants to be certified as independent

- (1) A person who, for any period on or after the relevant date, holds a transmission licence and participates in the transmission of electricity for the purpose mentioned in subsection (2) must ensure that the person is certified by the Authority under section 10D throughout that period.
- (2) That purpose is the purpose of—
- giving a supply to any premises; or
  - enabling a supply to be so given.

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- (3) A person who, for any period on or after the relevant date, holds an interconnector licence and participates in the operation of an electricity interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.
- (4) In subsections (1) and (3) the “relevant date” in respect of a person is 3 March 2012 or any later date before 4 March 2013 which the Authority specifies under subsection (5) or (6) in respect of the person.
- (5) The Authority may specify a later date in respect of a person if—
  - (a) the person has asked the Authority to specify a later date;
  - (b) the person is not, and is not part of, a vertically integrated undertaking; and
  - (c) no senior officer of the person is also a senior officer of a relevant producer or supplier.
- (6) The Authority may also specify a later date in respect of a person if the Authority thinks that, for reasons beyond its and the person’s control, the Authority will not reasonably be able to make a final decision before 3 March 2012 as to whether to certify the person.
- (7) In subsection (5)(b) “vertically integrated undertaking” has the meaning given by Article 2(21) of the Electricity Directive.

## **10B Application for certification**

- (1) Any person may apply for certification.
- (2) An application for certification—
  - (a) must be made in writing to the Authority; and
  - (b) must be made in such form and contain such information as the Authority may specify.
- (3) If the application is made on or after 3 March 2013 and the applicant is a person from a third country or a person controlled by a person from a third country, the Authority must, as soon as is reasonably practicable after receiving the application—
  - (a) notify the Secretary of State and the European Commission that an application has been made by such a person; and
  - (b) enclose with the notification to the Secretary of State any information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (4) The Authority may ask an applicant for certification for any further information the Authority thinks is relevant to the application, and the applicant must supply that information if—
  - (a) it is in the applicant’s possession; or
  - (b) it is information which the applicant could reasonably be expected to obtain.
- (5) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to an application for certification, and the relevant producer or supplier must supply that information if—
  - (a) it is in the relevant producer or supplier’s possession; or

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- (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (6) A person required to supply information under subsection (4) or (5) must do so by any deadline specified by the Authority.

## **10C Report where applicant connected with a country outside the European Economic Area**

- (1) This section applies if the Secretary of State is notified by the Authority under section 10B(3) that an application has been made by a person from a third country or a person controlled by a person from a third country.
- (2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the certification of the applicant.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10B(4) or (5) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—
  - (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

## **10D Certification**

- (1) Where the Authority receives an application for certification, it must make a preliminary decision by the relevant deadline as to whether it should certify the applicant.
- (2) The relevant deadline is the end of the 4 months beginning with the day on which the Authority receives the application; but this is subject to any extension under subsection (3).
- (3) If, before the deadline mentioned in subsection (2) (or before that deadline as previously extended under this subsection), the Authority asks the applicant or a relevant producer or supplier for information under section 10B(4) or (5), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.
- (4) As soon as is reasonably practicable after making the preliminary decision the Authority must notify the decision and the reasons for it to—
  - (a) the applicant;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (5) The Authority must enclose with the notification under subsection (4)(c) a copy of any report—

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- (a) which the Secretary of State has prepared under section 10C in respect of the applicant; and
  - (b) which the Authority receives before giving the notification.
- (6) Subsections (7) and (8) apply in relation to the Authority’s final decision under Article 3 of the Electricity Regulation as to whether to certify the applicant.
- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
- (a) the applicant;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (8) If the final decision is to certify the applicant the applicant is to be taken as certified by the Authority under this section.

#### **10E Grounds for certification**

- (1) This section applies to—
- (a) a preliminary decision under section 10D as to whether an applicant should be certified;
  - (b) a final decision under Article 3 of the Electricity Regulation as to whether to certify an applicant.
- (2) The Authority may only decide that the applicant should be certified, or decide to certify the applicant, if one of the following five grounds (“the certification grounds”) applies.
- (3) The first certification ground is that the applicant meets the ownership unbundling requirement in section 10F.
- (4) The second certification ground is that the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraph (9) of Article 9 of the Electricity Directive (alternative arrangements for independence), and the Authority thinks the requirements of that paragraph are met.
- (5) The third certification ground is that—
- (a) the applicant has asked the Authority to exempt it from the ownership unbundling requirement on the grounds in paragraphs (1) and (2) of Article 13 of the Electricity Directive (independent system operator);
  - (b) the applicant has nominated an independent system operator for designation in accordance with those paragraphs; and
  - (c) the Authority—
    - (i) thinks that the requirements of those paragraphs are met, and
    - (ii) is minded to designate the nominated independent system operator.
- (6) The fourth certification ground is that—
- (a) the applicant holds a licence under section 6(1)(e); and
  - (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 17 of the Electricity Regulation (new interconnectors) and remains entitled to the benefit of it.
- (7) The fifth certification ground is that—

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- (a) the applicant holds a licence under section 6(1)(e); and
  - (b) in accordance with the conditions of that licence, the applicant has been granted an exemption under Article 7 of Regulation (EC) No. 1228/2003 of the European Parliament and of the Council of 26 June 2003 on conditions for access to the network for cross-border exchanges in electricity (new interconnectors) and remains entitled to the benefit of it.
- (8) But, regardless of whether a certification ground applies, the Authority—
- (a) may, in particular, decide that the applicant should not be certified, or decide not to certify the applicant, if, on the basis of an opinion expressed by the European Commission under Article 11 of the Electricity Directive (certification in relation to persons from countries outside the European Economic Area), the Authority thinks that the certification of the applicant would put at risk the security of electricity supplies in any EEA state;
  - (b) must not decide that the applicant should be certified, and must not decide to certify the applicant, if a report prepared by the Secretary of State under section 10C states that the certification of the applicant would put at risk the security of electricity supplies in the United Kingdom or any other EEA state;
  - (c) must not decide to certify the applicant on the second certification ground if the European Commission has not verified, in accordance with paragraph (10) of Article 9 of the Electricity Directive (verification of independence under alternative arrangements), that the requirement in that paragraph as to arrangements for effective independence is met.

## **10F The ownership unbundling requirement**

- (1) In section 10E(3) the ownership unbundling requirement is met by an applicant for certification if <sup>F131</sup>in relation to each of the five tests below—
- (a) the Authority thinks that it is passed, or
  - (b) it is treated as passed by virtue of subsection (7), (9) or (9A).]
- (2) The first test is that the applicant—
- (a) does not control a relevant producer or supplier;
  - (b) does not have a majority shareholding in a relevant producer or supplier; and
  - (c) will not, on or after the relevant date, exercise shareholder rights in relation to a relevant producer or supplier.
- (3) For the purposes of subsection (2)(c), the Authority is entitled to think that the applicant will not exercise shareholder rights if the applicant has given an undertaking not to exercise those shareholder rights.
- (4) The second test is that, where the applicant is a company, partnership or other business, none of its senior officers has been, or may be, appointed by a person who—
- (a) controls an electricity undertaking which is a relevant producer or supplier; or
  - (b) has a majority shareholding in an electricity undertaking which is a relevant producer or supplier.
- (5) The third test is that, where the applicant is a company, partnership or other business, none of its senior officers is also a senior officer of an electricity undertaking which is a relevant producer or supplier.
- (6) The fourth test is that the applicant is not controlled by a person who controls a relevant producer or supplier.

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- (7) But even where the fourth test is not passed, the Authority may treat it as passed if—
- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
  - (b) the control over the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- (8) The fifth test is that the applicant is not controlled by a person who has a majority shareholding in a relevant producer or supplier.
- (9) But even where the fifth test is not passed, the Authority may treat it as passed if—
- (a) the control over the applicant was gained through the exercise of a right conferred as a condition of the provision of either financial support or a guarantee (or both), in relation to the applicant’s business; or
  - (b) the majority shareholding in the relevant producer or supplier was gained through the exercise of such a right conferred in relation to the business of the relevant producer or supplier.
- [ Except where subsection (9B) applies, the Authority may treat one or more of the five <sup>F132</sup>(9A) tests in this section as passed if—
- (a) the test or tests are not passed in relation to a relevant producer or supplier,
  - (b) the applicant has demonstrated to the Authority’s satisfaction that the applicant does not have a relationship with the relevant producer or supplier which might lead the applicant to discriminate in favour of the relevant producer or supplier, and
  - (c) the Authority thinks it appropriate to treat the test or tests as passed.
- (9B) This subsection applies where the applicant, or a person who controls or has a majority shareholding in the applicant, controls or has a majority shareholding in a person (“A”) who operates a generating station and—
- (a) A is a relevant producer or supplier; and
  - (b) the generating station is directly physically connected to anything that forms part of the applicant’s transmission system or electricity interconnector.]

(10) In subsection (2)(c) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

#### Textual Amendments

**F131** Words in s. 10F(1) substituted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(2)** (with reg. 4)

**F132** S. 10F(9A)(9B) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(3)** (with reg. 4)

## 10G The ownership unbundling requirement: supplementary

- (1) Subsections (2) and (3) apply where—
- (a) by virtue of subsection (7) or (9) of section 10F, the Authority treats the fourth or fifth test under section 10F as passed in relation to a person; and
  - (b) the person is certified in reliance on that treatment.

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- (2) The Authority must by notice to the certified person specify a period of time at the end of which the Authority will cease to treat that test as passed by virtue of that subsection.
- (3) The Authority may by notice to the certified person extend that period if the Authority thinks it necessary or expedient to do so.
- (4) In deciding whether to treat a test as passed by virtue of section 10F(7) or (9), and in determining any period or extension under subsection (2) or (3), the Authority—
  - (a) must take into account—
    - (i) the period of time for which the test is likely to continue not to be passed, and
    - (ii) whether the relationship (direct or indirect) between the applicant and the relevant producer or supplier has led or might lead the applicant to discriminate in favour of the relevant producer or supplier; and
  - (b) may, in particular, take into account any information or undertaking given to the Authority by the applicant, the relevant producer or supplier or the person who controls the applicant and controls or has a majority shareholding in the relevant producer or supplier.
- (5) The information and undertakings that may be taken into account under subsection (4) (b) include information and undertakings regarding any measures that have been or will be put in place to ensure the effective separation of the business of the applicant and the business of the relevant producer or supplier.

## **10H Designation for the purposes of EU electricity legislation**

- (1) This section applies in relation to any period for which a person—
  - (a) holds a transmission licence or an interconnector licence; and
  - (b) is certified.
- (2) If the person is certified on the first, second, fourth or fifth certification ground in section 10E, the person is designated as an electricity transmission system operator for the purposes of Article 10(2) of the Electricity Directive (designation of transmission system operators).
- (3) If the person is certified on the third certification ground in section 10E, the independent system operator nominated in the application for certification is designated as an electricity transmission system operator for the purposes of that Article.
- (4) As soon as is reasonably practicable after a person is designated by virtue of this section, the Authority must notify the designation to—
  - (a) the person designated;
  - (b) the Secretary of State; and
  - (c) the European Commission.

## **10I Monitoring and review of certification**

- (1) The Authority must monitor, in respect of each certified person, whether the basis on which the Authority decided to certify the person, including the certification ground on which the person was certified, (the “certification basis”) continues to apply.

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- (2) If, on or after 3 March 2013, as result of information it has received or obtained, the Authority thinks that a person from a third country has taken or may take control of a certified person, the Authority must, as soon as is reasonably practicable—
  - (a) notify the information to the Secretary of State and the European Commission; and
  - (b) enclose with the notification to the Secretary of State any further information which, at the time of the notification, the Authority has in its possession and thinks is relevant to the question of whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.
- (3) The Authority must review whether the certification basis in respect of a certified person continues to apply if the European Commission asks it to do so.
- (4) A review under subsection (3) is to be carried out within the 4 months beginning with the day on which the Authority receives the request from the European Commission.
- (5) The Authority may also review whether the certification basis in respect of a certified person continues to apply if—
  - (a) the certified person notifies it of any event or circumstance which may affect that basis; or
  - (b) the Authority thinks that the basis may no longer apply.
- (6) A review under subsection (5) is to be carried out within the 4 months beginning with—
  - (a) if paragraph (a) of subsection (5) applies, the day on which the Authority receives the notification under that paragraph;
  - (b) otherwise, the first day on which the Authority thinks that the certification basis may no longer apply.
- (7) Subsection (8) applies where—
  - (a) by virtue of section 10F(7) or (9), the Authority has treated the fourth or fifth test under section 10F as passed in relation to a person;
  - (b) the person is certified in reliance on that treatment; and
  - (c) the period specified under section 10G as the period at the end of which that treatment will cease comes to an end.
- (8) Where this subsection applies, the Authority must review whether that test is now passed.
- (9) A review under subsection (8) is to be carried out within the 4 months beginning with the end of the period mentioned in subsection (7)(c).
- [<sup>F133</sup>(10) If, before any of the deadlines mentioned in subsection (4), (6) or (9) (or before such deadline as previously extended under this subsection), the Authority asks the certified person or a relevant producer or supplier for information under section 10J(2) or (3), the relevant deadline is the end of the 4 months beginning with the day on which the last of that information is received.]

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### Textual Amendments

**F133** S. 10I(10) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014](#) (S.I. 2014/3333), regs. 1(1), **3(4)** (with reg. 4)

## **10J Review of certification: requirement to provide information etc**

- (1) As soon as is reasonably practicable after beginning a review under section 10I, the Authority must notify the certified person that the review is being carried out and of the reasons for it.
- (2) The Authority may ask that person for any information the Authority thinks is relevant to the review, and the person must supply the information if—
  - (a) it is in the person's possession; or
  - (b) it is information which the person could reasonably be expected to obtain.
- (3) The Authority may ask a relevant producer or supplier for any information the Authority thinks is relevant to a review under section 10I, and the relevant producer or supplier must supply that information if—
  - (a) it is in the relevant producer or supplier's possession; or
  - (b) it is information which the relevant producer or supplier could reasonably be expected to obtain.
- (4) A person required to supply information under subsection (2) or (3) must do so by any deadline specified by the Authority.

## **10K Report as to any connection of certified person with a country outside the European Economic Area**

- (1) This section applies if the Authority notifies information to the Secretary of State under section 10I(2) in respect of a certified person.
- (2) The Secretary of State must prepare a report on whether the security of electricity supplies in the United Kingdom or any other EEA state would be put at risk by the continued certification of the person.
- (3) The Secretary of State must prepare the report and send it to the Authority within the 6 weeks beginning with the day on which the notification is received.
- (4) If, before the Secretary of State sends the report to the Authority, the Authority receives information under section 10J(2) or (3) and thinks that the information is relevant to the preparation of the report, the Authority must supply that information to the Secretary of State as soon as is reasonably practicable.
- (5) In preparing the report, the Secretary of State must take into account—
  - (a) any relevant international law; and
  - (b) any relevant agreement between the government of the United Kingdom and the government of the third country in question.

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## **10L Continuation or withdrawal of certification**

- (1) Where the Authority reviews under section 10I(3) or (5) whether the certification basis in respect of a certified person continues to apply, it may, within the 4 months mentioned in section 10I(4) or (6) [<sup>F134</sup>or where relevant the 4 months mentioned in section 10I(10)], either—
  - (a) make a preliminary decision that the certification should be continued on the certification ground mentioned in section 10I(1); or
  - (b) make a preliminary decision that the certification should be withdrawn.
- (2) If the Authority does not make a decision under subsection (1) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the certification ground mentioned in section 10I(1).
- (3) Where the Authority reviews under section 10I(8) whether the fourth or fifth test under section 10F is now passed, it may, within the 4 months mentioned in section 10I(9) [<sup>F135</sup>or where relevant the 4 months mentioned in section 10I(10)], either—
  - (a) make a preliminary decision that the certification should be continued on the basis that the test is now passed; or
  - (b) make a preliminary decision that the certification should be withdrawn.
- (4) If the Authority does not make a decision under subsection (3) within those 4 months, it is to be taken as having made a preliminary decision at the end of the 4 months that the certification should be continued on the basis that the test is now passed.
- (5) As soon as is reasonably practicable after a preliminary decision is made (or taken to be made) under this section, the Authority must—
  - (a) notify the decision to the certified person and the Secretary of State; and
  - (b) notify the decision to the European Commission, enclosing the information it considers relevant to the decision.
- (6) Subsections (7) to (9) apply in relation to the Authority's final decision under Article 3 of the Electricity Regulation whether to confirm the certification.
- (7) As soon as is reasonably practicable after making the final decision the Authority must notify the decision and the reasons for it to—
  - (a) the person in relation to whom the review was carried out;
  - (b) the Secretary of State; and
  - (c) the European Commission.
- (8) If the final decision is to continue the certification the person is to be taken as continuing to be certified by the Authority under section 10D.
- (9) Otherwise, the person is to be taken as no longer certified.
- (10) Section 10E(8)(a) and (b) applies in relation to a decision mentioned in this section as it applies in relation to a decision mentioned in section 10E(1), but as if—
  - (a) the references in section 10E(8)(a) and (b) to the certification of the applicant were references to the continued certification of the person certified; and
  - (b) the reference in section 10E(8)(b) to a report prepared under section 10C were a reference to a report prepared under section 10K.

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### Textual Amendments

- F134** Words in s. 10L(1) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(5)** (with reg. 4)
- F135** Words in s. 10L(3) inserted (15.1.2015) by [The Electricity and Gas \(Ownership Unbundling\) Regulations 2014 \(S.I. 2014/3333\)](#), regs. 1(1), **3(6)** (with reg. 4)

## **10M Prohibition on the exercise of certain shareholder rights and rights of appointment**

- (1) A person must not exercise a shareholder right or a right of appointment if—
- the right falls within subsection (2), (3), (4) or (5);
  - the relevant date in respect of the certified person mentioned in that subsection has been reached;
  - the exercise of the right would or might lead the certified person to discriminate in favour of the relevant producer or supplier mentioned in that subsection; and
  - the relevant producer or supplier is a person to whom subsection (6) applies.
- (2) A right falls within this subsection if—
- it is a shareholder right;
  - it is held by a person who controls a person certified on the certification ground in section 10E(3); and
  - it is exercisable in relation to a relevant producer or supplier.
- (3) A right falls within this subsection if—
- it is a shareholder right;
  - it is exercisable in relation to a person certified on the certification ground in section 10E(3); and
  - it is held by a person who controls a relevant producer or supplier.
- (4) A right falls within this subsection if—
- it is a shareholder right;
  - the person who holds it appointed a senior officer of a person certified on the certification ground in section 10E(3);
  - the person appointed continues to hold that office; and
  - the right is exercisable in relation to an electricity undertaking which is a relevant producer or supplier.
- (5) A right falls within this subsection if—
- it is a right to appoint a senior officer of a person certified on the certification ground in section 10E(3); and
  - the person who holds it has, within the immediately preceding period of 3 years, exercised a shareholder right in relation to an electricity undertaking which is a relevant producer or supplier.
- (6) This subsection applies to a person if, in order to carry out of some or all of the activity by virtue of which the person is a relevant producer or supplier, the person—

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- (a) requires a licence under section 6 of this Act, section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum); or
  - (b) would require such a licence if carrying out the activity in Great Britain.
- (7) In this section—
- (a) “exercise” means exercise directly or indirectly, and “exercisable” is to be interpreted accordingly; and
  - (b) “relevant date” means the relevant date for the purposes of section 10A(1) or (3).

## **10N Validity of acts infringing section 10M**

- (1) The following are voidable on an application to the court—
  - (a) the exercise of a shareholder right in breach of section 10M;
  - (b) the appointment of a senior officer in breach of that section.
- (2) Any person may make an application under subsection (1).
- (3) Such an application may not be made after the end of the 5 years beginning with the day on which the shareholder right was exercised or the appointment made.
- (4) If, by virtue of this section, the court declares the exercise of a shareholder right or an appointment to be void, it may make an order as to the consequences of its declaration.
- (5) In this section, “the court” means—
  - (a) in relation to England and Wales, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

## **10O Interpretation**

- (1) In sections 10A to 10N and this section—
  - “control”, in relation to one person having control over another, has the meaning given by Article 2(34) of the Electricity Directive (but in determining whether one person (“person A”) has control over another (“person B”) no account is to be taken of any unexercised contractual or other right which would, if exercised, give person A control over person B and which was conferred as a condition of the provision of either financial support or a guarantee (or both), by person A in relation to the business of person B); and references to one person controlling another are to be interpreted accordingly;
  - “certified” means taken in accordance with section 10D(8) or 10L(8) to be certified (or as continuing to be certified) by the Authority under section 10D; and “certify” and “certification” are to be interpreted accordingly;
  - “certification grounds” has the meaning given by section 10E(2);
  - “majority shareholding” means a simple majority of shares;
  - “person from a third country” means a person the Authority thinks is from a third country;
  - “shareholder right” means a right, conferred by the holding of a share in a company’s share capital—
    - (a) to vote at general meetings of the company; or
    - (b) to appoint or remove a member of the company’s board of directors;

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“third country” means a country that is not, and is not part of, an EEA state.

- (2) In this Part “electricity undertaking” means a person who—
- (a) generates electricity for the purpose of giving a supply to any premises or enabling a supply to be so given;
  - (b) supplies electricity to any premises; or
  - (c) otherwise generates or sells electricity.
- (3) In this Part “relevant producer or supplier”, in relation to an applicant for certification or a certified person, means a person who falls within each of subsections (4) and (5).
- (4) A person falls within this section if the person—
- (a) is an electricity undertaking;
  - (b) gets natural gas from its natural condition in strata otherwise than as an unintended consequence of the storage of gas, and requires a licence under section 3 of the Petroleum Act 1998 (licences to search and bore for and get petroleum) to do so or would require such a licence if getting the gas in Great Britain;
  - (c) produces any other gas, including in particular biomethane, which is suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the Gas Act 1986;
  - (d) supplies to any premises gas which has been conveyed to those premises through pipes;
  - (e) arranges with a gas transporter for gas to be introduced into, conveyed by means of or taken out of a pipe-line system operated by that transporter; or
  - (f) otherwise sells gas,
- and terms used in paragraphs (b) to (f) of this subsection have the same meanings in those paragraphs as in Part 1 of the Gas Act 1986.

- [<sup>F136</sup>(5) A person falls within this subsection if—
- (a) the person requires a licence under section 7A of the Gas Act 1986 (licensing of gas suppliers and gas shippers) or section 6 of this Act to carry out the activity by virtue of which the person falls within subsection (4);
  - (b) where the person does not carry out the activity in Great Britain, the person would, in the Authority’s opinion, require such a licence if carrying out the activity in Great Britain; or
  - (c) the person has a relationship with the applicant or certified person which the Authority thinks might lead the applicant or certified person to discriminate in favour of the person.]]

**Textual Amendments**

**F136** S. 100(5) substituted (24.4.2017) by [The Electricity and Gas \(Internal Markets\) Regulations 2017 \(S.I. 2017/493\)](#), regs. 1(1), 3 (with reg. 7(2))

*Modification of licences*

<sup>F137</sup>**11 Modification by agreement.**

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### Textual Amendments

**F137** S. 11 omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011](#) (S.I. 2011/2704), regs. 1(1), **43(2)** (with reg. 44)

### **[<sup>F138</sup>[<sup>F139</sup>]** Modification of conditions of licences

- (1) The Authority may make modifications of—
  - (a) the conditions of a particular licence;
  - (b) the standard conditions of licences of any type mentioned in section 6(1).
- (2) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications;
  - (b) setting out the proposed modifications and their effect;
  - (c) stating the reasons why it proposes to make the modifications; and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under subsection (2) must be given—
  - (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
  - (b) by sending a copy of the notice to—
    - (i) each relevant licence holder,
    - (ii) the Secretary of State, <sup>F140</sup>...
    - (iii) [<sup>F141</sup>Citizens Advice, and
    - (iv) Citizens Advice Scotland.]
- (4A) The Authority must consider any representations which are duly made.]
- (5) If, within the time specified [<sup>F142</sup>by virtue of subsection (2)(d)], the Secretary of State directs the Authority not to make any modification, the Authority shall comply with the direction.
- <sup>F143</sup>(6) Subsections (7) to (9) apply where, having complied with subsections (2) to (4A), the Authority decides to proceed with the making of modifications of the conditions of any licence under this section.
- (7) The Authority must—
  - (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).

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- (8) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 5A).
- (9) The date specified by virtue of subsection (8) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.
- (10) In this section “relevant licence holder”—
- (a) in relation to the modification of standard conditions of licences of any type, means the holder of a licence of that type—
    - (i) which is to be modified by the inclusion of any new standard condition, or
    - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d); or
  - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.]]

#### Textual Amendments

- F138** S. 11A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 35; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F139** S. 11A(1)-(4A) and heading substituted for s. 11A(1)-(4) and heading (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011](#) (S.I. 2011/2704), regs. 1(1), **43(4)** (with reg. 44)
- F140** Word in s. 11A(4)(b)(ii) omitted (1.4.2014) by virtue of [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014](#) (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(5)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F141** S. 11A(4)(b)(iii)(iv) substituted for s. 11A(4)(b)(iii) (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014](#) (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(5)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F142** Words in s. 11A(5) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011](#) (S.I. 2011/2704), regs. 1(1), **43(5)** (with reg. 44)
- F143** S. 11A(6)-(10) substituted for s. 11A(6)-(11) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011](#) (S.I. 2011/2704), regs. 1(1), **43(6)** (with reg. 44)

#### [<sup>F144</sup>11B Modification of conditions under section 11A: supplementary

- (1) Subsections (2) and (3) apply where at any time the Authority modifies the conditions of licences of any type under section 11A.
- (2) If the conditions modified are standard conditions, the Authority must—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.

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- (3) The Authority may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under section 11A does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 5A in relation to the decision to which the modification relates.]

#### Textual Amendments

**F144** S. 11B inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(7)** (with reg. 44)

*[<sup>F145</sup>Appeal from decisions of the Authority*

#### Textual Amendments

**F145** Ss. 11C-11H and cross-heading inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(8)** (with reg. 44)

### 11C Appeal to the [<sup>F146</sup>CMA]

- (1) An appeal lies to the [<sup>F147</sup>CMA] against a decision by the Authority to proceed with the modification of a condition of a licence under section 11A.
- (2) An appeal may be brought under this section only by—
  - (a) a relevant licence holder (within the meaning of section 11A);
  - (b) any other person who holds a licence of any type under section 6(1) whose interests are materially affected by the decision;
  - (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
  - (d) [<sup>F148</sup>Citizens Advice or Citizens Advice Scotland or those bodies acting jointly] in the capacity of representing consumers whose interests are materially affected by the decision.
- (3) The permission of the [<sup>F149</sup>CMA] is required for the bringing of an appeal under this section.
- (4) The [<sup>F149</sup>CMA] may refuse permission to bring an appeal only on one of the following grounds—
  - (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to an appeal brought by [<sup>F150</sup>Citizens Advice or Citizens Advice Scotland or those bodies acting jointly] , that the interests of the consumers represented are not materially affected by the decision;

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- (d) in relation to any appeal—
- (i) that the appeal is brought for reasons that are trivial or vexatious;
  - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this section to a qualifying body or association are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.

#### Textual Amendments

- F146** Word in s. 11C heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 31\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F147** Word in s. 11C(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 31\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F148** Words in s. 11C(2)(d) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 5\(6\)\(a\)](#) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F149** Word in s. 11C(3)(4) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 31\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F150** Words in s. 11C(4)(c) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 5\(6\)\(b\)](#) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

#### 11D Procedure on appeal to <sup>F151</sup>CMA]

<sup>F152</sup>(1) . . . . .

(2) <sup>F153</sup>... Schedule 5A to this Act has effect.

[ Except where specified otherwise in Schedule 5A, the functions of the CMA with <sup>F154</sup>(2A) respect to an appeal under section 11C are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

#### Textual Amendments

- F151** Word in s. 11D heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 32\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F152** S. 11D(1) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 32\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F153** Word in s. 11D(2) omitted (1.4.2014) by virtue of [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 32\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F154** S. 11D(2A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 32\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 11E Determination by <sup>F155</sup>CMA] of appeal

(1) This section applies to every appeal brought under section 11C.

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- (2) In determining an appeal the [F156CMA] must have regard, to the same extent as is required of the Authority, to the matters to which the Authority must have regard—
- (a) in the carrying out of its principal objective under section 3A;
  - (b) in the performance of its duties under that section; and
  - (c) in the performance of its duties under sections 3B and 3C.
- (3) In determining the appeal the [F156CMA]—
- (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal; but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The [F156CMA] may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
- (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2);
  - (b) that the Authority failed to give the appropriate weight to any matter mentioned in subsection (2);
  - (c) that the decision was based, wholly or partly, on an error of fact;
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 11A(7)(b);
  - (e) that the decision was wrong in law.
- (5) To the extent that the [F156CMA] does not allow the appeal, it must confirm the decision appealed against.

#### Textual Amendments

**F155** Word in s. 11E heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 33\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

**F156** Word in s. 11E(2)-(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 33\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 11F [F157CMA's] powers on allowing appeal

- (1) This section applies where the [F158CMA] allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the [F159CMA] must do one or more of the following—
- (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the [F159CMA];
  - (c) substitute the [F160CMA's] decision for that of the Authority (to the extent that the appeal is allowed) and give any directions to the Authority or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the [F161CMA] must do one or both of the following—
- (a) quash the decision (to the extent that the appeal is allowed);

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- (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the [F161 CMA].
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the Authority is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.
- (7) For the purposes of this section a decision is a price control decision, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the [F162 CMA's] opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and sections 11G and 11H any reference to a party to an appeal is to be read in accordance with Schedule 5A.

#### Textual Amendments

- F157** Word in s. 11F heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(6\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F158** Word in s. 11F(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F159** Word in s. 11F(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F160** Word in s. 11F(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F161** Word in s. 11F(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F162** Word in s. 11F(7) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 34\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 11G Time limits for [F163 CMA] to determine an appeal

- (1) The [F164 CMA] must—
- (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
- (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.
- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
- (a) the [F165 CMA] has received representations on the timing of the determination from a party to the appeal; and
- (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).

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- (4) Where subsection (3) applies, the [F165CMA] must—
- (a) determine an appeal against a price control decision within the period specified by it, not being longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the [F165CMA] must also—
- (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this section “price control decision” is to be read in accordance with section 11F.
- (7) References in this section to the permission date are to the date on which the [F166CMA] gave permission to bring the appeal in accordance with section 11C(3).

#### Textual Amendments

- F163** Word in s. 11G heading substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 35(4); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F164** Word in s. 11G(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 35(2); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F165** Word in ss. 11G(3)-(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 35(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F166** Word in s. 11G(7) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), Sch. 6 para. 35(3); S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 11H Determination of appeal by [F167CMA] : supplementary

- (1) A determination by the [F168CMA] on an appeal—
- (a) must be contained in an order made by the [F168CMA];
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the [F168CMA] to the parties to the appeal;
  - (e) must be published by the [F168CMA]—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the [F168CMA] considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The [F169CMA] may exclude from publication under subsection (1)(e) any information which it is satisfied is—
- (a) commercial information, the disclosure of which would, or might in [F170CMA's] opinion, significantly harm the legitimate business interests of an undertaking to which it relates; or

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- (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the [<sup>F170</sup>CMA's] opinion, significantly harm the individual's interests.
- (3) The Authority must take such steps as it considers requisite for it to comply with an order of the [<sup>F171</sup>CMA] made by virtue of subsection (1)(a).
- (4) The steps must be taken—
  - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 11B apply where a condition of a licence is modified in accordance with section 11F as they apply where a condition of a licence is modified under section 11A.]

**Textual Amendments**

- F167** Word in s. 11H heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 36\(5\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F168** Word in s. 11H(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 36\(2\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F169** Word in s. 11H(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 36\(3\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F170** Word in s. 11H(2) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 36\(3\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F171** Word in s. 11H(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\), s. 103\(3\), Sch. 6 para. 36\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

<sup>F172</sup>**12 Modification references to Monopolies Commission.**

.....

**Textual Amendments**

- F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\), regs. 1\(1\), 43\(10\)](#) (with reg. 44)

<sup>F172</sup>**12A References under section 12: time limits**

.....

**Textual Amendments**

- F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\), regs. 1\(1\), 43\(10\)](#) (with reg. 44)

<sup>F172</sup>**12B References under section 12: powers of investigation**

.....

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**Textual Amendments**

**F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(10)** (with reg. 44)

**<sup>F172</sup>13 Reports on modification references.**

.....

**Textual Amendments**

**F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(10)** (with reg. 44)

**<sup>F172</sup>14 Modification following report.**

.....

**Textual Amendments**

**F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(10)** (with reg. 44)

**<sup>F172</sup>14A Competition Commission’s power to veto modifications following report.**

.....

**Textual Amendments**

**F172** Ss. 12-14A omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **43(10)** (with reg. 44)

**15 Modification by order under other enactments.**

[<sup>F173</sup>(1) Where the [<sup>F174</sup>CMA] or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of the conditions of a particular licence, or the standard conditions of licences of any type mentioned in section 6(1), to such extent as may appear to the relevant authority to be requisite or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.]

[<sup>F173</sup>(2) In subsection (1) above “relevant order” means—

- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
  - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence; or

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- (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence; or
- (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market [<sup>F175</sup>or markets] in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to the generation, transmission, distribution or supply of electricity.]
- [<sup>F176</sup>(2A) The modification under subsection (1) of part of a standard condition of a particular licence shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- [<sup>F177</sup>(2B) Where the relevant authority modifies under subsection (1) the standard conditions of licences of any type, the relevant authority—
- (a) shall also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time; and
- (b) may, after consultation with the Authority, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of any licence of that type granted before that time.]
- (2C) Where at any time the [<sup>F178</sup>relevant authority] modifies standard conditions under subsection (2B)(a) for the purposes of their incorporation in licences granted after that time, [<sup>F179</sup>the relevant authority] shall publish those modifications in such manner as [<sup>F179</sup>the relevant authority] considers appropriate.]
- [<sup>F180</sup>(3) Expressions used in subsection (2) above and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.]

#### Textual Amendments

- F173** S. 15(1)(2) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(2)**; S.I. 2003/1397, art. 2(1), Sch.
- F174** Word in s. 15(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 37**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F175** Words in s. 15(2)(b) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 64** (with art. 3)
- F176** S. 15(2A)-(2C) inserted (1.10.2001) by 2000 c. 27, s. 40(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F177** S. 15(2B) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(3)**; S.I. 2003/1397, art. 2(1), Sch.
- F178** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(4)(a)**; S.I. 2003/1397, art. 2(1), Sch.
- F179** Words in s. 15(2C) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(4)(b)**; S.I. 2003/1397, art. 2(1), Sch.
- F180** S. 15(3) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 5(5)**; S.I. 2003/1397, art. 2(1), Sch.

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

- C43** S. 15(1): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

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**[<sup>F181</sup>15A Licence modifications relating to new electricity trading arrangements.**

- (1) The Secretary of State may, in accordance with this section, modify—
  - (a) the conditions of a particular licence; or
  - (b) the standard conditions of licences of any type mentioned in section 6(1),
 where he considers it necessary or expedient to do so for the purpose of implementing, or facilitating the operation of, new arrangements relating to the trading of electricity.
- (2) The power to modify licence conditions under paragraph (a) or (b) of subsection (1) includes power—
  - (a) to make modifications relating to the operation of transmission systems and distribution systems; and
  - (b) to make incidental or consequential, or transitional, modifications.
- (3) Before making modifications under this section the Secretary of State shall consult the holder of any licence being modified and such other persons as he considers appropriate.
- (4) Any consultation undertaken by the Secretary of State before the commencement of this section shall be as effective, for the purposes of subsection (3), as if undertaken after that commencement.
- (5) Any modification of part of a standard condition of a licence under subsection (1)(a) shall not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (6) Where the standard conditions of licences of any type are modified under subsection (1)(b), the Secretary of State shall make (as nearly as may be) the same modifications of the standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (7) The Secretary of State shall publish any modifications under this section in such manner as he considers appropriate.
- (8) The power of the Secretary of State under this section may not be exercised after the end of the period of two years beginning with the passing of the Utilities Act 2000.]

**Textual Amendments**

**F181** S. 15A inserted (28.7.2000) by 2000 c. 27, s. 68(1)(2)

*[<sup>F182</sup>Duties of electricity distributors]*

**Textual Amendments**

**F182** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**<sup>F183</sup>[16 Duty to connect on request.**

- (1) An electricity distributor is under a duty—

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- (a) to make a connection between a distribution system of his and any premises, when required to do so by—
    - (i) the owner or occupier of the premises; or
    - (ii) an authorised supplier acting with the consent of the owner or occupier of the premises,for the purpose of enabling electricity to be conveyed to or from the premises;
  - (b) to make a connection between a distribution system of his and any distribution system of another authorised distributor, when required to do so by that authorised distributor for the purpose of enabling electricity to be conveyed to or from that other system.
- (2) Any duty under subsection (1) includes a duty to provide such electric lines or electrical plant as may be necessary to enable the connection to be used for the purpose for which it is required.
- (3) The duties under this section shall be performed subject to such terms as may be agreed under section 16A for so long as the connection is required.
- (4) In this section and sections 16A to 23 [<sup>F184</sup>and Schedule 5B]—
- (a) any reference to making a connection includes a reference to maintaining the connection (and continuing to provide the necessary electric lines or electrical plant);
  - (b) any reference to requiring a connection includes a reference to requiring the connection to be maintained (and the continued provision of the necessary electric lines and electrical plant); and
  - (c) any reference to the provision of any electric line or electrical plant is a reference to the provision of such a line or an item of electrical plant either by the installation of a new one or by the modification of an existing one.
- (5) The duties under this section are subject to the following provisions of this Part and any regulations made under those provisions.]

#### Textual Amendments

**F183** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by [2000 c. 27, s. 44](#); [S.I. 2001/3266, art. 2, Sch.](#)(subject to transitional provisions in art. 3-20)

**F184** Words in s. 16(4) inserted (6.4.2017) by [Infrastructure Act 2015 \(c. 7\), ss. 52\(4\), 57\(7\)\(c\)](#); [S.I. 2017/108, reg. 2](#)

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

**C44** S. 16 applied (1.10.2001) by [S.I. 2001/3264, reg. 4\(2\)](#)

### [<sup>F185</sup>16A Procedure for requiring a connection.

- (1) Where a person requires a connection to be made by an electricity distributor in pursuance of section 16(1), he shall give the distributor a notice requiring him to offer terms for making the connection.
- (2) That notice must specify—
  - (a) the premises or distribution system to which a connection to the distributor's system is required;
  - (b) the date on or by which the connection is to be made; and

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- (c) the maximum power at which electricity may be required to be conveyed through the connection.
- (3) The person requiring a connection shall also give the distributor such other information in relation to the required connection as the distributor may reasonably request.
- (4) A request under subsection (3) shall be made as soon as practicable after the notice under subsection (1) is given (if not made before that time).
- [ The Secretary of State may, after consulting the Authority, make provision by
- <sup>F186</sup>(4A) regulations for the purpose of entitling an electricity distributor to require a person requiring a connection in pursuance of section 16(1) to pay connection offer expenses to such extent as is reasonable in all the circumstances.
- (4B) In this section “connection offer expenses” means expenses which—
- (a) are of a kind specified by the regulations, and
- (b) have been reasonably incurred by the electricity distributor.
- (4C) Regulations under subsection (4A) may specify—
- (a) circumstances in which an electricity distributor may not require the payment of connection offer expenses by virtue of the regulations;
- (b) the manner in which expenses reasonably incurred by an electricity distributor are to be calculated for the purposes of subsection (4B)(b).]
- (5) As soon as practicable after receiving the notice under subsection (1)<sup>F187</sup>, any information requested under subsection (3) and any amount payable by virtue of subsection (4A) to the distributor by the person requiring the connection, the distributor shall give to that person] a notice—
- (a) stating the extent (if any) to which his proposals are acceptable to the distributor and specifying any counter proposals made by him;
- (b) specifying any payment which that person will be required to make under section 19(1)<sup>F188</sup> ... [<sup>F189</sup>or regulations under Schedule 5B];
- (c) specifying any security which that person will be required to give under section 20; and
- (d) stating any other terms which that person will be required to accept under section 21.
- (6) A notice under subsection (5) shall also contain a statement of the effect of section 23.]

#### Textual Amendments

- F185** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by 2000 c. 27, s. 44; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F186** Ss. 16A(4A)-(4C) inserted (26.1.2009) by Energy Act 2008 (c. 32), ss. 98(2), 110(2); S.I. 2009/45, art. 2(d)(v)
- F187** Words in s. 16A(5) substituted (26.1.2009) by Energy Act 2008 (c. 32), ss. 98(3), 110(2); S.I. 2009/45, art. 2(d)(v)
- F188** Words in s. 16A(5)(b) omitted (6.4.2017) by virtue of Infrastructure Act 2015 (c. 7), ss. 52(5)(a), 57(7)(c); S.I. 2017/108, reg. 2 (with reg. 3)
- F189** Words in s. 16A(5)(b) inserted (6.4.2017) by Infrastructure Act 2015 (c. 7), ss. 52(5)(b), 57(7)(c); S.I. 2017/108, reg. 2

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**[<sup>F190</sup>17 Exceptions from duty to connect.**

- (1) Nothing in section 16(1) requires an electricity distributor to make a connection if and to the extent that—
  - (a) he is prevented from doing so by circumstances not within his control;
  - (b) circumstances exist by reason of which his doing so would or might involve his being in breach of regulations under section 29, and he has taken all such steps as it was reasonable to take both to prevent the circumstances from occurring and to prevent them from having that effect; or
  - (c) it is not reasonable in all the circumstances for him to be required to do so.
- (2) Without prejudice to the generality of subsection (1) an electricity distributor is not required to make a connection if—
  - (a) making the connection involves the distributor doing something which, without the consent of another person, would require the exercise of a power conferred by any provision of Schedule 3 or 4;
  - (b) the distributor’s licence does not provide for that provision to have effect in relation to him; and
  - (c) any necessary consent has not, at the time the request is made, been given.
- (3) Subsection (1)(c) does not permit an electricity distributor to disconnect any premises or distribution system to which a connection is being maintained by him unless the distributor gives—
  - (a) where the connection is to premises, to the occupier or to the owner if the premises are not occupied;
  - (b) where the connection is to another distribution system, to the person who is authorised by a licence or exemption to run that system,not less than seven working days’ notice of his intention to disconnect the premises or distribution system.]

**Textual Amendments**

**F190** Ss. 16, 16A, 17 and cross-heading substituted for ss. 16, 17 (1.10.2001) by [2000 c. 27, s. 44](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**[<sup>F191</sup>18 .....**

**Textual Amendments**

**F191** S. 18 repealed (1.10.2001) by [2000 c. 27, ss. 45, 108, Sch. 8](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**19 Power to recover expenditure.**

- (1) Where any electric line or electrical plant is provided by [<sup>F192</sup>an electricity distributor] in pursuance of section 16(1) above, the [<sup>F192</sup>distributor] may require any expenses reasonably incurred in providing it to be defrayed by the person requiring the [<sup>F192</sup>connection] to such extent as is reasonable in all the circumstances.

<sup>F193</sup>(2) .....

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<sup>F193</sup>(3) .....

[<sup>F194</sup>(3A) Schedule 5B (reimbursement of persons who have met expenses) has effect.]

- (4) Any reference in this section [<sup>F195</sup>and Schedule 5B] to any expenses reasonably incurred in providing an electric line or electrical plant includes a reference to the capitalised value of any expenses likely to be so incurred in [<sup>F196</sup>continuing to provide it]

#### Textual Amendments

- F192** Words in s. 19(1) substituted (1.10.2001) by 2000 c. 27, s. 46(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F193** S. 19(2)(3) omitted (6.4.2017) by virtue of Infrastructure Act 2015 (c. 7), ss. 52(2)(a), 57(7)(c); S.I. 2017/108, reg. 2 (with reg. 3)
- F194** S. 19(3A) inserted (6.4.2017) by Infrastructure Act 2015 (c. 7), ss. 52(2)(b), 57(7)(c); S.I. 2017/108, reg. 2
- F195** Words in s. 19(4) inserted (6.4.2017) by Infrastructure Act 2015 (c. 7), ss. 52(2)(c), 57(7)(c); S.I. 2017/108, reg. 2
- F196** Words in s. 19(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 46(5); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

## 20 Power to require security.

[<sup>F197</sup>(1) Subject to the following provisions of this section, an electricity distributor may require any person who requires a connection in pursuance of section 16(1) to give him reasonable security for the payment to him under section 19 in respect of the provision of any electric line or electrical plant.

- (1A) If a person fails to give any security required under subsection (1), or the security given has become invalid or insufficient, and he fails to provide alternative or additional security, the electricity distributor may if he thinks fit—
- (a) if the connection has not been made, refuse to provide the line or plant for so long as the failure continues; or
  - (b) if the connection is being maintained, disconnect the premises or distribution system in question.]

<sup>F198</sup>(2) .....

- (3) Where any money is deposited with [<sup>F199</sup>an electricity distributor] by way of security in pursuance of this section, the [<sup>F199</sup>distributor] shall pay interest, at such rate as may from time to time be fixed by the [<sup>F199</sup>distributor] with the approval of the Director, on every sum of 50p so deposited for every three months during which it remains in the hands of the [<sup>F199</sup>distributor].

<sup>F198</sup>(4) .....

#### Textual Amendments

- F197** S. 20(1)(1A) substituted for s. 20(1) (1.10.2001) by 2000 c. 27, s. 47(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

*Status: Point in time view as at 01/04/2019.*

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**F198** S. 20(2)(4) repealed (1.10.2001) by 2000 c. 27, ss. 47(4), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F199** Words in s. 20(3) substituted (1.10.2001) by 2000 c. 27, s. 47(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**[<sup>F200</sup>21 Additional terms of connection.**

An electricity distributor may require any person who requires a connection in pursuance of section 16(1) above to accept in respect of the making of the connection—

- (a) any restrictions which must be imposed for the purpose of enabling the distributor to comply with regulations under section 29;
- (b) any terms which it is reasonable in all the circumstances for that person to be required to accept; and
- (c) without prejudice to the generality of paragraph (b), any terms restricting any liability of the distributor for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept.]

**Textual Amendments**

**F200** S. 21 substituted (1.10.2001) by 2000 c. 27, s. 48; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**<sup>F201</sup>[22 Special agreements with respect to connection.**

- (1) Notwithstanding anything in sections 16 to 21, a person who requires a connection in pursuance of section 16(1) may enter into an agreement with the electricity distributor (referred to in this Part as a “special connection agreement”) for the making of the connection on such terms as may be agreed by the parties.
- (2) So long as a special connection agreement is effective, the rights and liabilities of the parties shall be those arising under the agreement and not those provided for by sections 16 to 21.
- (3) Nothing in subsection (2) prevents the giving of a notice under section 16A(1) requiring a connection to be made as from the time when a special connection agreement ceases to be effective.]

**Textual Amendments**

**F201** S. 22 substituted (1.10.2001) by 2000 c. 27, s. 49; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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

**C45** S. 22 applied (1.10.2001) by S.I. 2001/3264, reg. 5(2)

*Status: Point in time view as at 01/04/2019.*

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## 23 Determination of disputes.

[<sup>F202</sup>(1) This section applies (in addition to any disputes to which it applies by virtue of any other provision of this Act) to any dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection.

[ This section also applies to any dispute arising under regulations under Schedule 5B  
<sup>F203</sup>(1ZA) between—

- (a) an electricity distributor, and
- (b) a person in respect of whom the electricity distributor exercises the reimbursement powers conferred by the regulations.]

(1A) A dispute to which this section applies—

- (a) may be referred to the [<sup>F204</sup>Authority—
  - (i) by either party, or
  - (ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;] and
- (b) on such a reference, shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.

(1B) The practice and procedure to be followed in connection with any such determination shall be such as the Authority may consider appropriate. .

(1C) No dispute arising under sections 16 to 21 which relates to the making of a connection between any premises and a distribution system may be referred to the Authority after the end of the period of 12 months beginning with the time when the connection is made..

[ No dispute arising under regulations under Schedule 5B may be referred to the  
<sup>F205</sup>(1D) 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.]

(2) Where a dispute arising under sections 16 to 21 between an electricity distributor and a person requiring a connection falls to be determined under this section, the Authority may give directions as to the circumstances in which, and the terms on which, the distributor is to make or (as the case may be) to maintain a connection pending the determination of the dispute.]

[<sup>F206</sup>(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.]

(3) Where any dispute arising under section 20(1) above falls to be determined under this section, the Director may give directions as to the security (if any) to be given pending the determination of the dispute.

(4) Directions under subsection (2)[<sup>F207</sup>, (2A)] or (3) above may apply either in cases of particular descriptions or in particular cases.

[<sup>F208</sup>(4A) A person making an order under this section shall include in the order his reasons for reaching his decision with respect to the dispute.]

(5) An order under this section—

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- (a) may include such incidental, supplemental and consequential provision (including provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order) as that person considers appropriate; and
  - (b) shall be final and—
    - (i) in England and Wales, shall be enforceable, in so far as it includes such provision as to costs or expenses, as if it were a judgment of the county court;
    - (ii) in Scotland, shall be enforceable as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (6) In including in an order under this section any such provision as to costs or expenses as is mentioned in subsection (5) above, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.

[<sup>F209</sup>(7) Section 16(4)(a) does not apply to the references in this section to making a connection.]

#### Textual Amendments

- F202** S. 23(1)(1A)-(1C)(2) substituted for s. 23(1)(2) (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F203** S. 23(1ZA) inserted (6.4.2017) by **Infrastructure Act 2015 (c. 7), ss. 52(6)(a), 57(7)(c)**; S.I. 2017/108, reg. 2
- F204** Words in s. 23(1A)(a) substituted (1.4.2014) by **The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 5(7)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F205** S. 23(1D) inserted (6.4.2017) by **Infrastructure Act 2015 (c. 7), ss. 52(6)(b), 57(7)(c)**; S.I. 2017/108, reg. 2
- F206** S. 23(2A) inserted (6.4.2017) by **Infrastructure Act 2015 (c. 7), ss. 52(6)(c), 57(7)(c)**; S.I. 2017/108, reg. 2
- F207** Word in s. 23(4) inserted (6.4.2017) by **Infrastructure Act 2015 (c. 7), ss. 52(6)(d), 57(7)(c)**; S.I. 2017/108, reg. 2
- F208** S. 23(4A) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F209** S. 23(7) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 26(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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

- C46** S. 23 applied (with modifications) (1.10.2001) by S.I. 2001/3266, **arts. 1(2), 6(3)**
- C47** S. 23 applied (1.10.2001) by S.I. 2001/3266, **arts. 1(2), 11(3)**

## 24 The public electricity supply code.

The provisions of Schedule 6 to this Act (which relate to the [<sup>F210</sup>distribution and supply of electricity]) shall have effect.

#### Textual Amendments

- F210** Words in s. 24 substituted (1.10.2001) by 2000 c. 27, s. 51(1); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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## [<sup>F211</sup>Enforcement of obligations of regulated persons]

### Textual Amendments

**F211** S. 25 cross-heading substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **39(2)**

## 25 Orders for securing compliance.

- (1) Subject to subsections (2)[<sup>F212</sup>, [<sup>F213</sup>(4A) to] (5A)] and section 26 below, where [<sup>F214</sup>the Authority] is satisfied that a [<sup>F215</sup>regulated person] is contravening, or is likely to contravene, any relevant condition or requirement, [<sup>F216</sup>it] shall by a final order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.
  - (2) Subject to [<sup>F217</sup>subsections [<sup>F213</sup>(4A) to] (5A)] below, where it appears to [<sup>F214</sup>the Authority]—
    - (a) that a [<sup>F215</sup>regulated person] is contravening, or is likely to contravene, any relevant condition or requirement; and
    - (b) that it is requisite that a provisional order be made, [<sup>F216</sup>it] shall (instead of taking steps towards the making of a final order) by a provisional order make such provision as appears to him requisite for the purpose of securing compliance with that condition or requirement.
  - (3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional order be made, [<sup>F214</sup>the Authority] shall have regard, in particular—
    - (a) to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of the relevant condition or requirement, is likely to be done, or omitted to be done, before a final order may be made; and
    - (b) to the fact that the effect of the provisions of this section and section 27 below is to exclude the availability of any remedy (apart from under those provisions or for negligence) in respect of any contravention of a relevant condition or requirement.
  - (4) Subject to [<sup>F217</sup>subsections [<sup>F218</sup>(4A) to] (5A)] and section 26 below, [<sup>F214</sup>the Authority] shall confirm a provisional order, with or without modifications, if—
    - (a) [<sup>F216</sup>it] is satisfied that the [<sup>F215</sup>regulated person] to whom the order relates is contravening, or is likely to contravene, any relevant condition or requirement; and
    - (b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.
- [<sup>F219</sup>(4A) Before making a final order or making or confirming a provisional order, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (4B) The Authority shall not make a final order or make or confirm a provisional order if it considers that it would be more appropriate to proceed under the Competition Act 1998.]
- (5) [<sup>F214</sup>the Authority] shall not make a final order or make or confirm a provisional order in relation to a [<sup>F215</sup>regulated person] if [<sup>F216</sup>it] is satisfied—

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- (a) that the duties imposed on him by section [F220]3A to 3C] preclude the making or, as the case may be, the confirmation of the order;
  - F221 (b) .....
  - F221 (c) .....
  - F222 (d) .....
- [F223] (5A) The Authority is not required to make a final order or make or confirm a provisional order if it is satisfied—
- (a) that the [F215]regulated person] has agreed to take and is taking all such steps as it appears to the Authority for the time being to be appropriate for the [F215]regulated person] to take for the purpose of securing or facilitating compliance with the condition or requirement in question; or
  - (b) that the contraventions were or the apprehended contraventions are of a trivial nature.]
- (6) Where [F214]the Authority][F224]decides that it would be more appropriate to proceed under the Competition Act 1998 or ] is satisfied as mentioned in [F217]subsections (5) [F225]or] (5A)] above, [F216;it] shall—
- (a) serve notice that [F216;it][F226]has so decided or] is so satisfied on the [F215]regulated person]; and
  - (b) publish the notice in such manner as [F216;it] considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (7) A final or provisional order—
- (a) shall require the [F215]regulated person] to whom it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;
  - (b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and
  - (c) may be revoked at any time by [F214]the Authority].
- (8) In this Part—
- “final order” means an order under this section other than a provisional order;
- “provisional order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order;
- [F227]“regulated person” means a person who is one or more of the following—
- (a) a licence holder;
  - (b) a distribution exemption holder;
  - (c) a supply exemption holder;
  - (d) an electricity undertaking which is a relevant producer or supplier;]
  - (e) [F228]a nominated electricity market operator;]
- “relevant condition”, in relation to a [F215]regulated person], means any condition of [F229]any licence held by that person];
- “relevant requirement”, in relation to a [F215]regulated person], means any duty or other requirement imposed on [F230]that person under a provision specified in Schedule 6A as a relevant provision in respect of that person].

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### Textual Amendments

- F212** Words in s. 25(1) substituted (1.10.2001) by 2000 c. 27, s. 60(2)(7); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F213** Words in s. 25(1)(2) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(2)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F214** Words substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), s 3(2); S.I. 2000/3343, art. 2, **Sch.**
- F215** Words in s. 25 substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(3)(a)**
- F216** Word substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), s 3(2); S.I. 2000/3343, art. 2, **Sch.**
- F217** Words in s. 25(2)(4)(6) substituted (1.10.2001) by 2000 c. 27, s. 60(3)(7); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F218** Words in s. 25(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(2)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F219** S. 25(4A)(4B) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(3)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F220** Words in s. 25(5)(a) substituted (20.12.2000) by 2000 c. 27, ss. 108, 110(2), **Sch. 6 Pt. II para. 27**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F221** S. 25(5)(b)(c) repealed (1.10.2001) by 2000 c. 27, ss. 60(4)(7), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F222** S. 25(5)(d) and word omitted (1.4.2014) by virtue of Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(4)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F223** S. 25(5A) inserted (1.10.2001) by 2000 c. 27, s. 60(5)(7); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F224** Words in s. 25(6) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(5)(a)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F225** Word in s. 25(6) substituted (1.10.2008) by Consumers, Estate Agents and Redress Act 2007 (c. 17), s. 66(2), **Sch. 7 para. 9**; S.I. 2008/2550, art. 2, **Sch.**
- F226** Words in s. 25(6)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 5(5)(b)**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F227** Words in s. 25(8) inserted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(a)**
- F228** Words in s. 25(8) inserted (24.4.2017) by The Electricity and Gas (Internal Markets) Regulations 2017 (S.I. 2017/493), regs. 1(1), **4**
- F229** Words in s. 25(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(b)**
- F230** Words in s. 25(8) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), **39(4)(c)**

### Modifications etc. (not altering text)

- C48** Ss. 25-28 applied (1.4.2005) by The Renewables Obligation (Scotland) Order 2005 (S.S.I. 2005/185), arts. 1(1), **18(22)**
- C49** Ss. 25-28 applied (1.4.2006) by The Renewables Obligation (Scotland) Order 2006 (S.S.I. 2006/173), arts. 1(1), **24(8)**
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by The Renewables Obligation (Scotland) Order 2007 (S.S.I. 2007/267), arts. 1(1), **31**
- C51** S. 25: power to amend conferred (18.12.2013) by Energy Act 2013 (c. 32), ss. **38(c)**, 156(3)
- C52** Ss. 25-28 applied (1.12.2015) by The Renewables Obligation Order 2015 (S.I. 2015/1947), arts. 1(2), **74(6)**

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## 26 Procedural requirements.

- (1) Before he makes a final order or confirms a provisional order, the Director shall give notice—
  - (a) stating that he proposes to make or confirm the order and setting out its effect;
  - (b) setting out—
    - (i) the relevant condition or requirement for the purpose of securing compliance with which the order is to be made or confirmed;
    - (ii) the acts or omissions which, in his opinion, constitute or would constitute contraventions of that condition or requirement; and
    - (iii) the other facts which, in his opinion, justify the making or confirmation of the order; and
  - (c) specifying the period (not being less than [F23121] days from the date of publication of the notice) within which representations or objections with respect to the proposed order or proposed confirmation may be made,and shall consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under subsection (1) above shall be given—
  - (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, on the [F232regulated person] to whom the order relates.
- (3) The Director shall not make a final order with modifications, or confirm a provisional order with modifications, except—
  - (a) with the consent to the modifications of the [F232regulated person] to whom the order relates; or
  - (b) after complying with the requirements of subsection (4) below.
- (4) The requirements mentioned in subsection (3) above are that the Director shall—
  - (a) serve on the [F232regulated person] to whom the order relates such notice as appears to him requisite of his proposal to make or confirm the order with modifications;
  - (b) in that notice specify the period (not being less than [F23121] days from the date of the service of the notice) within which representations or objections with respect to the proposed modifications may be made; and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after making a final order or making or confirming a provisional order, the Director shall—
  - (a) serve a copy of the order on the [F232regulated person] to whom the order relates; and
  - (b) publish the order in such manner as he considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.
- (6) Before revoking a final order or a provisional order which has been confirmed, the Director shall give notice—
  - (a) stating that he proposes to revoke the order and setting out its effect; and

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- (b) specifying the period (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed revocation may be made,  
and shall consider any representations or objections which are duly made and not withdrawn.
- (7) If, after giving a notice under subsection (6) above, the Director decides not to revoke the order to which the notice relates, he shall give notice of his decision.
- (8) A notice under subsection (6) or (7) above shall be given—
- (a) by publishing the notice in such manner as the Director considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them; and
  - (b) by serving a copy of the notice on the [F232regulated person] to whom the order relates.

#### Textual Amendments

**F231** Words in s. 26(1)(c)(4)(b) substituted (1.10.2001) by [2000 c. 27, s. 60\(6\)\(7\)](#); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**F232** Words in s. 26 substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), [39\(3\)\(b\)](#)

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

**C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\)](#), arts. 1(1), [18\(22\)](#)

**C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\)](#), arts. 1(1), [24\(8\)](#)

**C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\)](#), arts. 1(1), [31](#)

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

## 27 Validity and effect of orders.

- (1) If the [F233regulated person] to whom a final or provisional order relates is aggrieved by the order and desires to question its validity on the ground—
- (a) that its making or confirmation was not within the powers of section 25 above;  
or
  - (b) that any of the requirements of section 26 above have not been complied with in relation to it,
- he may, within 42 days from the date of service on him of a copy of the order, make an application to the court under this section.
- (2) On any such application the court may, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the [F233regulated person] have been substantially prejudiced by a failure to comply with those requirements, quash the order or any provision of the order.
- (3) Except as provided by this section, the validity of a final or provisional order shall not be questioned by any legal proceedings whatever.

*Status: Point in time view as at 01/04/2019.*

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- (4) The obligation to comply with a final or provisional order shall be a duty owed to any person who may be affected by a contravention of the order.
- (5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against a [<sup>F233</sup>regulated person] in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order shall be enforceable by civil proceedings by the Director for an injunction or for interdict or for any other appropriate relief.
- (8) In this section and section 28 below “the court” means the High Court in relation to England and Wales and the Court of Session in relation to Scotland.
- [<sup>F234</sup>(9) Subsections (1) to (3) do not apply in the case of a final or provisional order that relates to a relevant condition imposed by the exercise of the power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).
- (10) For provision about appeals relating to such orders, see section 20 of the Energy Act 2010.]

#### Textual Amendments

**F233** Words in s. 27 substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **39(3)(e)**

**F234** S. 27(9)(10) inserted (16.7.2012) by [Energy Act 2010 \(c. 27\)](#), s. 38(2)(b), **Sch. para. 7**; S.I. 2012/1841, art. 2(b)

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

**C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\)](#), arts. 1(1), **18(22)**

**C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\)](#), arts. 1(1), **24(8)**

**C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\)](#), arts. 1(1), **31**

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), **74(6)**

#### [<sup>F235</sup>27A Penalties.

- (1) Where the Authority is satisfied that a [<sup>F236</sup>regulated person]—
  - (a) has contravened or is contravening any relevant condition or requirement; or
  - (b) has failed or is failing to achieve any standard of performance prescribed under section 39 or 39A,

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- the Authority may, subject to section 27C, impose on the [F236regulated person] a penalty of such amount as is reasonable in all the circumstances of the case.
- [F237(2) Before imposing a penalty on a regulated person under subsection (1), the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (2A) The Authority shall not impose a penalty on a regulated person under subsection (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.]
- (3) Before imposing a penalty on a [F236regulated person] under subsection (1) the Authority shall give notice—
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of a penalty and the amount of the penalty proposed; and
  - (d) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (4) Before varying any proposal stated in a notice under subsection (3)(a) the Authority shall give notice—
- (a) setting out the proposed variation and the reasons for it; and
  - (b) specifying the period (not being less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (5) As soon as practicable after imposing a penalty, the Authority shall give notice—
- (a) stating that it has imposed a penalty on the [F236regulated person] and its amount;
  - (b) setting out the relevant condition or requirement or the standard of performance in question;
  - (c) specifying the acts or omissions which, in the opinion of the Authority, constitute the contravention or failure in question and the other facts which, in the opinion of the Authority, justify the imposition of the penalty and its amount; and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the [F236regulated person], by which the penalty is required to be paid.
- (6) The [F236regulated person] may, within 21 days of the date of service on him of a notice under subsection (5), make an application to the Authority for it to specify different dates by which different portions of the penalty are to be paid.

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- (7) Any notice required to be given under this section shall be given—
- (a) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;
  - (b) by serving a copy of the notice on the [<sup>F236</sup>regulated person]; <sup>F238</sup> ...
  - [<sup>F239</sup>(c) by serving a copy of the notice on Citizens Advice; and
  - (d) by serving a copy of the notice on Citizens Advice Scotland.]
- [<sup>F240</sup>(8A) This section is subject to section 27O (maximum amount of penalty or compensation that may be imposed).]
- (10) Any sums received by the Authority by way of penalty under this section shall be paid into the Consolidated Fund.
- (11) The power of the Authority under subsection (1) is not exercisable in respect of any contravention or failure before the commencement of section 59 of the Utilities Act 2000.]

#### Textual Amendments

- F235** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. **59(1)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F236** Words in s. 27A substituted (10.11.2011) by *The Electricity and Gas (Internal Markets) Regulations 2011* (S.I. 2011/2704), regs. 1(1), **39(3)(d)**
- F237** S. 27A(2)(2A) substituted for s. 27A(2) (1.4.2014) by *Enterprise and Regulatory Reform Act 2013* (c. 24), s. 103(3), **Sch. 14 para. 6**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F238** Word in s. 27A(7)(b) omitted (1.4.2014) by virtue of *The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014* (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(8)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F239** S. 27A(7)(c)(d) substituted for s. 27A(7)(c) (1.4.2014) by *The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014* (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(8)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F240** S. 27A(8A) substituted for s. 27A(8)(9) (18.2.2014) by *Energy Act 2013* (c. 32), s. 156(2)(h), **Sch. 14 para. 2(3)** (with Sch. 14 para. 2(7))

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

- C48** Ss. 25-28 applied (1.4.2005) by *The Renewables Obligation (Scotland) Order 2005* (S.S.I. 2005/185), arts. 1(1), **18(22)**
- C49** Ss. 25-28 applied (1.4.2006) by *The Renewables Obligation (Scotland) Order 2006* (S.S.I. 2006/173), arts. 1(1), **24(8)**
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by *The Renewables Obligation (Scotland) Order 2007* (S.S.I. 2007/267), arts. 1(1), **31**
- C52** Ss. 25-28 applied (1.12.2015) by *The Renewables Obligation Order 2015* (S.I. 2015/1947), arts. 1(2), **74(6)**
- C53** S. 27A(10) applied (16.7.2012) by *Energy Act 2010* (c. 27), ss. **21(7)(b)**, 38(2)(a); S.I. 2012/1841, art. 2(a)

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## [<sup>F241</sup>27B Statement of policy with respect to penalties.

- (1) The Authority shall prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention or failure the Authority shall have regard to its statement of policy most recently published at the time when the contravention or failure occurred.
- (3) The Authority may revise its statement of policy and where it does so shall publish the revised statement.
- (4) Publication under this section shall be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority shall undertake such consultation as it considers appropriate when preparing or revising its statement of policy.]

### Textual Amendments

**F241** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

### Modifications etc. (not altering text)

- C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\)](#), [arts. 1\(1\), 18\(22\)](#)
- C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\)](#), [arts. 1\(1\), 24\(8\)](#)
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\)](#), [arts. 1\(1\), 31](#)
- C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), [arts. 1\(2\), 74\(6\)](#)

## [<sup>F242</sup>27C Time limits on the imposition of financial penalties.

- (1) Where no final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure later than the end of the period of [<sup>F243</sup>five years] from the time of the contravention or failure, unless before the end of that period—
  - (a) the notice under section 27A(3) relating to the penalty is served on the [<sup>F244</sup>regulated person] under section 27A(7), or
  - (b) a notice relating to the contravention or failure is served on the [<sup>F244</sup>regulated person] under section 28(2).
- (2) Where a final or provisional order has been made in relation to a contravention or failure, the Authority may not impose a penalty in respect of the contravention or failure unless the notice relating to the penalty under section 27A(3) was served on the [<sup>F244</sup>regulated person] under section 27A(7)—
  - (a) within three months from the confirmation of the provisional order or the making of the final order, or

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- (b) where the provisional order is not confirmed, within six months from the making of the provisional order.]

#### Textual Amendments

- F242** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))
- F243** Words in s. 27C(1) substituted (8.6.2010) by [Energy Act 2010 \(c. 27\), ss. 24\(2\), 38\(3\)](#) (with s. 24(3))
- F244** Words in s. 27C substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\), regs. 1\(1\), 39\(3\)\(e\)](#)

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

- C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\), arts. 1\(1\), 18\(22\)](#)
- C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\), arts. 1\(1\), 24\(8\)](#)
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\), arts. 1\(1\), 31](#)
- C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\), arts. 1\(2\), 74\(6\)](#)

#### [<sup>F245</sup>27D Interest and payment of instalments.

- (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time shall carry interest at the rate for the time being specified in section 17 of the <sup>M4</sup>Judgments Act 1838.
- (2) If an application is made under subsection (6) of section 27A in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the Authority grants an application under that subsection in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the Authority under that subsection, the Authority may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.]

#### Textual Amendments

- F245** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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

- C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\), arts. 1\(1\), 18\(22\)](#)
- C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\), arts. 1\(1\), 24\(8\)](#)
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\), arts. 1\(1\), 31](#)
- C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\), arts. 1\(2\), 74\(6\)](#)

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#### Marginal Citations

M4 1838 c. 110.

#### [<sup>F247</sup>27E Appeals [<sup>F246</sup> against penalties].

- (1) If the [<sup>F248</sup>regulated person] on whom a penalty is imposed is aggrieved by—
  - (a) the imposition of the penalty;
  - (b) the amount of the penalty; or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,
 the [<sup>F248</sup>regulated person] may make an application to the court under this section.
- (2) An application under subsection (1) must be made—
  - (a) within 42 days from the date of service on the [<sup>F248</sup>regulated person] of a notice under section 27A(5), or
  - (b) where the application relates to a decision of the Authority on an application by the [<sup>F248</sup>regulated person] under section 27A(6), within 42 days from the date the [<sup>F248</sup>regulated person] is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within subsection (4), the court—
  - (a) may quash the penalty;
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case; or
  - (c) in the case of an application under subsection (1)(c), may substitute for the date or dates imposed by the Authority an alternative date or dates.
- (4) The grounds falling within this subsection are—
  - (a) that the imposition of the penalty was not within the power of the Authority under section 27A;
  - (b) that any of the requirements of subsections (3) to (5) or (7) of section 27A have not been complied with in relation to the imposition of the penalty and the interests of the [<sup>F248</sup>regulated person] have been substantially prejudiced by the non-compliance; or
  - (c) that it was unreasonable of the Authority to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this section in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which the penalty, or a portion of the penalty, is to be paid a date before the determination of the application under this section it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.

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(8) Except as provided by this section, the validity of a penalty shall not be questioned by any legal proceedings whatever.

(9) In this section “the court” means—

- (a) in relation to England and Wales, the High Court; and
- (b) in relation to Scotland, the Court of Session.

[ This section does not apply in the case of a penalty that relates to a relevant condition <sup>F249</sup>(10) imposed by the exercise of the power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).

(11) For provision about appeals relating to such penalties, see section 21 of the Energy Act 2010.]]

#### Textual Amendments

**F246** Words in s. 27E heading inserted (18.2.2014) by [Energy Act 2013 \(c. 32\), s. 156\(2\)\(h\), Sch. 14 para. 2\(4\)](#)

**F247** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

**F248** Words in s. 27E substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\), regs. 1\(1\), 39\(3\)\(f\)](#)

**F249** S. 27E(10)(11) inserted (16.7.2012) by [Energy Act 2010 \(c. 27\), s. 38\(2\)\(b\), Sch. para. 8](#); [S.I. 2012/1841, art. 2\(b\)](#)

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

**C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\), arts. 1\(1\), 18\(22\)](#)

**C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\), arts. 1\(1\), 24\(8\)](#)

**C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\), arts. 1\(1\), 31](#)

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\), arts. 1\(2\), 74\(6\)](#)

#### [<sup>F250</sup>27F Recovery of penalties.

Where a penalty imposed under section 27A(1), or any portion of it, has not been paid by the date on which it is required to be paid and—

- (a) no application relating to the penalty has been made under section 27E during the period within which such an application can be made, or
- (b) an application has been made under that section and determined,

the Authority may recover from the [<sup>F251</sup>regulated person], as a civil debt due to it, any of the penalty and any interest which has not been paid.]

#### Textual Amendments

**F250** Ss. 27A-27F inserted (20.12.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27, s. 59\(1\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#)); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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**F251** Words in s. 27F substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **39(3)(g)**

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

- C48** Ss. 25-28 applied (1.4.2005) by [The Renewables Obligation \(Scotland\) Order 2005 \(S.S.I. 2005/185\)](#), arts. 1(1), **18(22)**
- C49** Ss. 25-28 applied (1.4.2006) by [The Renewables Obligation \(Scotland\) Order 2006 \(S.S.I. 2006/173\)](#), arts. 1(1), **24(8)**
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by [The Renewables Obligation \(Scotland\) Order 2007 \(S.S.I. 2007/267\)](#), arts. 1(1), **31**
- C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), **74(6)**

**[<sup>F252</sup>27G Consumer redress orders**

- (1) This section applies where the Authority is satisfied that—
  - (a) a regulated person has contravened, or is contravening, any relevant condition or requirement, and
  - (b) as a result of the contravention, one or more consumers have suffered loss or damage or been caused inconvenience.
- (2) The Authority may make an order (a “consumer redress order”) requiring the regulated person to do such things as appear to the Authority necessary for the purposes of—
  - (a) remedying the consequences of the contravention, or
  - (b) preventing a contravention of the same or a similar kind from being repeated.
- (3) A consumer redress order must specify the following—
  - (a) the regulated person to whom the order applies;
  - (b) the contravention in respect of which the order is made;
  - (c) the affected consumers, or a description of such consumers;
  - (d) the requirements imposed by the order;
  - (e) the date by which the regulated person must comply with such requirements.
- (4) As soon as practicable after making a consumer redress order, the Authority must—
  - (a) serve a copy of the order on the regulated person to whom the order applies, and
  - (b) either—
    - (i) serve a copy of the order on each affected consumer, or
    - (ii) publish the order in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of affected consumers.
- (5) The date specified in a consumer redress order under subsection (3)(e) may not be earlier than the end of the period of 7 days from the date of the service of a copy of the order on the regulated person.
- (6) Different dates may be specified under subsection (3)(e) in relation to different requirements imposed by the order.
- (7) This section is subject to sections 27H to 27O.
- (8) In this section and in sections 27H to 27O—

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“affected consumers”, in relation to a consumer redress order (or proposed order), are those consumers that the Authority is satisfied have suffered loss or damage, or been caused inconvenience, as a result of the contravention in respect of which the order is (or would be) made;

“consumers” means consumers in relation to electricity conveyed by distribution systems or transmission systems;

“consumer redress order” means an order under subsection (2).

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

## 27H Remedial action under a consumer redress order

- (1) The things mentioned in section 27G(2) that a regulated person may be required to do under a consumer redress order (“the required remedial action”) include, in particular—
  - (a) paying an amount to each affected consumer by way of compensation for the loss or damage suffered, or for the inconvenience caused, as a result of the contravention;
  - (b) preparing and distributing a written statement setting out the contravention and its consequences;
  - (c) terminating or varying any contracts entered into between the regulated person and affected consumers.
- (2) Where the required remedial action includes the payment of compensation, the order must specify—
  - (a) the amount of compensation to be paid, and
  - (b) the affected consumers, or a description of such consumers, to whom it is to be paid.
- (3) Where the required remedial action includes the preparation and distribution of a statement, the order may specify the information to be contained in the statement and the form and manner in which it is to be distributed.
- (4) The manner so specified may in particular include—
  - (a) sending a copy of the statement to each affected consumer;
  - (b) publishing the statement in such manner as the Authority considers appropriate for the purpose of bringing the statement to the attention of those consumers.
- (5) Where the required remedial action includes the termination or variation of a contract with an affected consumer—
  - (a) the order may specify the terms on which the contract is to be terminated or the way in which it is to be varied,

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- (b) the requirement has effect only if, and to the extent that, the affected consumer consents to the termination of the contract on those terms or to its variation in that way, and
- (c) the order may specify the steps to be taken by the regulated person for the purpose of enabling the affected consumer to give such consent.

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

### 271 Other procedural requirements in relation to consumer redress orders

- (1) Before making a consumer redress order the Authority must give notice stating that it proposes to make the order.
- (2) A notice under subsection (1) must specify—
  - (a) the regulated person to whom the order will apply,
  - (b) the contravention in respect of which the order is to be made,
  - (c) the affected consumers, or a description of such consumers,
  - (d) the requirements to be imposed by the order and the period within which such requirements are to be complied with, and
  - (e) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed order may be made,
 and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (3) Before varying any proposal stated in a notice under subsection (1) the Authority must give notice specifying—
  - (a) the proposed variation and the reasons for it, and
  - (b) the time (not being less than 21 days from the relevant date) by which representations or objections with respect to the proposed variation may be made,
 and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (4) Before revoking a consumer redress order the Authority must give notice—
  - (a) stating that it proposes to revoke the order and the reasons for doing so, and
  - (b) specifying the time (not being less than 21 days from the relevant date) within which representations or objections to the proposed revocation may be made,
 and the Authority must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice required to be given under this section is to be given—
  - (a) by serving a copy of the notice on the regulated person, and
  - (b) either—

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- (i) by serving a copy of the notice on each affected consumer, or
  - (ii) by publishing the notice in such manner as the Authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of affected consumers.
- (6) The “relevant date”, in relation to a notice under this section, is—
- (a) in a case where the notice is published in accordance with subsection (5)(b)(ii), the date on which it is published;
  - (b) in any other case, the latest date on which a copy of the notice is served in accordance with subsection (5)(a) and (b)(i).

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

## 27J Statement of policy with respect to consumer redress orders

- (1) The Authority must prepare and publish a statement of policy with respect to—
- (a) the making of consumer redress orders, and
  - (b) the determination of the requirements to be imposed by such orders (including, in particular, the considerations the Authority will have regard to in determining such requirements).
- (2) The Authority must have regard to its current statement of policy—
- (a) in deciding whether to make a consumer redress order in respect of a contravention, and
  - (b) in determining the requirements to be imposed by any such order.
- (3) The Authority may revise its statement of policy and, where it does so, must publish the revised statement.
- (4) Publication under this section is to be in such manner as the Authority considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The Authority must consult such persons as it considers appropriate when preparing or revising its statement of policy.

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

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## 27K Time limits for making consumer redress orders

- (1) Where no final or provisional order has been made in relation to a contravention, the Authority may not give a consumer redress order in respect of the contravention later than the end of the period of 5 years from the time of the contravention.
- (2) Subsection (1) does not apply if before the end of that period—
  - (a) the notice under section 27I(1) relating to the order is served on the regulated person, or
  - (b) a notice relating to the contravention is served on the regulated person under section 28(2).
- (3) Where a final or provisional order has been made in relation to a contravention, the Authority may give a consumer redress order in respect of the contravention only if the notice relating to the consumer redress order under section 27I(1) is served on the regulated person—
  - (a) within 3 months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within 6 months from the making of the provisional order.

### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

### Modifications etc. (not altering text)

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

## 27L Enforcement of consumer redress orders

- (1) Compliance with a consumer redress order is enforceable by civil proceedings by the Authority—
  - (a) for an injunction or interdict,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (2) Proceedings under subsection (1) are to be brought—
  - (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (3) The obligation of a regulated person to comply with a consumer redress order is a duty owed to any person who may be affected by a contravention of the order.
- (4) Without limiting the Authority's right to bring civil proceedings under subsection (1), a duty owed to any person ("P") by virtue of subsection (3) may be enforced by civil proceedings by P for any appropriate remedy or relief.
- (5) For the purposes of subsection (4), the duty owed to P may in particular be enforced by P as if it were contained in a contract between P and the regulated person who owes the duty.

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#### **Textual Amendments**

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

### **27M Appeals against consumer redress orders**

- (1) A regulated person in respect of whom a consumer redress order is made may make an application to the court under this section if the person is aggrieved by—
  - (a) the making of the order, or
  - (b) any requirement imposed by the order.
- (2) An application under subsection (1) must be made within 42 days from the date of service on the regulated person of a copy of the order under section 27G(4)(a).
- (3) On an application under subsection (1) the court may—
  - (a) quash the order or any provision of the order, or
  - (b) vary any such provision in such manner as the court considers appropriate.
- (4) The court may exercise the powers under subsection (3) only if it considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the following grounds—
  - (a) that the making of the order was not within the power of the Authority under section 27G;
  - (b) that any of the requirements under sections 27G(4) and 27I have not been complied with in relation to the making of the order and the interests of the regulated person have been substantially prejudiced by the non-compliance;
  - (c) that it was unreasonable of the Authority to require something to be done under the order (whether at all or in accordance with the provisions of the order).
- (5) If an application is made under this section in relation to a consumer redress order, a requirement imposed by the order does not need to be carried out in accordance with the order until the application has been determined.
- (6) Where the court substitutes a lesser amount of compensation for an amount required by the Authority in a consumer redress order, it may require the payment of interest on the substituted amount at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies as a date by which any compensation under a consumer redress order is to be paid a date before the determination of the application under this section, it may require the payment of interest on the amount from that date at such rate as it considers just and equitable.
- (8) Except as provided by this section, the validity of a consumer redress order is not to be questioned by any legal proceedings whatever.
- (9) In this section “the court” means—

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- (a) in relation to England and Wales, the High Court;
- (b) in relation to Scotland, the Court of Session.

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

### 27N Consumer redress orders: miscellaneous

- (1) If—
  - (a) compensation is required to be paid under a consumer redress order, and
  - (b) it is not paid by the date by which it is required to be paid in accordance with the order,
 the unpaid balance from time to time carries interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) The Authority may not make a consumer redress order where it is satisfied that the most appropriate way of proceeding is under the Competition Act 1998.
- (3) The Authority's power to make a consumer redress order as a result of a contravention of a relevant condition or requirement is not to be taken as limiting the Authority's power to impose a penalty under section 27A in relation to the same contravention (whether instead of, or in addition to, making a consumer redress order).
- (4) The power of the Authority to make a consumer redress order is not exercisable in respect of any contravention before the coming into force of Schedule 14 to the Energy Act 2013.

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(2)(h), [Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\)](#), arts. 1(2), [74\(6\)](#)

### 27O Maximum amount of penalty or compensation

- (1) The maximum amount of penalty that may be imposed on a regulated person in respect of a contravention may not exceed 10 per cent of the person's turnover.
- (2) The maximum amount of compensation that a regulated person may be required to pay in respect of a contravention may not exceed 10 per cent of the person's turnover.

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- (3) Subsections (1) and (2) are subject to subsection (4) if, in respect of a contravention, both a penalty is imposed and compensation is required to be paid.
- (4) The maximum amount in total of the penalty and compensation combined in respect of the contravention may not exceed 10 per cent of the turnover of the regulated person.
- (5) The Secretary of State may by order provide for how a person's turnover is to be determined for the purposes of this section.
- (6) An order under subsection (5) may make different provision for penalties and compensation.
- (7) An order under subsection (5) shall not be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (8) In this section—
  - “compensation” means compensation that a regulated person is required to pay by a consumer redress order;
  - “penalty” means a penalty imposed on a regulated person under section 27A.]

#### Textual Amendments

**F252** Ss. 27G-27O inserted (E.W.S.) (18.2.2014) by [Energy Act 2013 \(c. 32\), s. 156\(2\)\(h\), Sch. 14 para. 2\(2\)](#) (with [Sch. 14 para. 2\(7\)](#))

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

**C52** Ss. 25-28 applied (1.12.2015) by [The Renewables Obligation Order 2015 \(S.I. 2015/1947\), arts. 1\(2\), 74\(6\)](#)

## 28 Power to require information etc.

- (1) Where it appears to [<sup>F253</sup>the Authority that a [<sup>F254</sup>regulated person] —
  - (a) may be contravening, or may have contravened, any relevant condition or requirement; or
  - (b) may be failing, or may have failed, to achieve any standard of performance prescribed under section 39 or 39A,the Authority may, for any purpose connected with such of its functions under section 25 or 27A to [<sup>F255</sup>27O]] as are exercisable in relation to that matter, serve a notice under subsection (2) below on any person.
- (2) A notice under this subsection is a notice signed by the Director and—
  - (a) requiring the person on whom it is served to produce, at a time and place specified in the notice, to the Director or to any person appointed by the Director for the purpose, any documents which are specified or described in the notice and are in that person's custody or under his control; or
  - (b) requiring that person, if he is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Director such information as may be specified or described in the notice.

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- [<sup>F256</sup>(2A) Where a licence has been or is to be revoked or suspended, or has expired or is about to expire by effluxion of time, and it appears to the Authority, having regard to the duties imposed by section 3A, 3B or 3C, to be requisite or expedient to do so for any purpose connected with the revocation, suspension or expiry, the Authority may, with the consent of the Secretary of State, by notice in writing—
- (a) require the licence holder to produce, at a time and place specified in the notice, to the Authority, or to any person so specified, any records which are specified or described in the notice and are in the licence holder's custody or under his control; or
  - (b) require the licence holder to furnish to the Authority, or to any person specified in the notice, such information as may be specified or described in the notice, and specify the time, the manner and the form in which any such information is to be furnished.]
- (3) No person shall be required under this section to produce any documents [<sup>F257</sup>or records] which he could not be compelled to produce in civil proceedings in the court or, in complying with any requirement for the furnishing of information, to give any information which he could not be compelled to give in evidence in any such proceedings.
- (4) A person who without reasonable excuse fails to do anything required of him by notice under subsection (2) [<sup>F258</sup>or (2A)] above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who intentionally alters, suppresses or destroys any document [<sup>F259</sup>or record] which he has been required by any notice under subsection (2) [<sup>F260</sup>or (2A)] above to produce shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) If a person makes default in complying with a notice under subsection (2) [<sup>F261</sup>or (2A)] above, the court may, on the application of the Director, make such order as the court thinks fit for requiring the default to be made good; and any such order may provide that all the costs or expenses of and incidental to the application shall be borne by the person in default or by any officers of a company or other association who are responsible for its default.

#### Textual Amendments

- F253** Words and s. 28(1)(a)(b) substituted for words in s. 28(1) (1.10.2001) by 2000 c. 27, s. 59(2); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F254** Words in s. 28(1) substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 39(3)(h)
- F255** Word in s. 28(1) substituted (18.2.2014) by Energy Act 2013 (c. 32), s. 156(2)(h), Sch. 14 para. 2(5)
- F256** S. 28(2A) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(2); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F257** Words in s. 28(3) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(3); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F258** Words in s. 28(4) inserted (20.12.2000) by 2000 c. 27, s. 108, Sch. 6 Pt. II para. 29(4); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

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- F259** Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(5)(a)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F260** Words in s. 28(5) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(5)(b)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F261** Words in s. 28(6) inserted (20.12.2000) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 29(6)**; S.I. 2000/3343, art. 2, **Sch.** (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)

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

- C48** Ss. 25-28 applied (1.4.2005) by **The Renewables Obligation (Scotland) Order 2005** (S.S.I. 2005/185), arts. 1(1), **18(22)**
- C49** Ss. 25-28 applied (1.4.2006) by **The Renewables Obligation (Scotland) Order 2006** (S.S.I. 2006/173), arts. 1(1), **24(8)**
- C50** Ss. 25-28 applied (with modifications) (S.) (1.4.2007) by **The Renewables Obligation (Scotland) Order 2007** (S.S.I. 2007/267), arts. 1(1), **31**
- C52** Ss. 25-28 applied (1.12.2015) by **The Renewables Obligation Order 2015** (S.I. 2015/1947), arts. 1(2), **74(6)**

*Provisions with respect to supply generally*

**29 Regulations relating to supply and safety.**

- (1) The Secretary of State may make such regulations as he thinks fit for the purpose of—
- securing that supplies of electricity are regular and efficient;
  - protecting the public from dangers arising from the generation, transmission<sup>[F262]</sup>, distribution] or supply of electricity, [<sup>F263</sup>from the use of electricity interconnectors,] from the use of electricity supplied or from the installation, maintenance or use of any electric line or electrical plant; and
  - without prejudice to the generality of paragraph (b) above, eliminating or reducing the risks of personal injury, or damage to property or interference with its use, arising as mentioned in that paragraph.

<sup>[F264]</sup>(1A) Regulations under this section may include provision for securing the purposes mentioned in subsection (1) in relation to the territorial sea adjacent to Great Britain or any Renewable Energy Zone.]

- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may—
- prohibit the [<sup>F265</sup>distribution] or transmission of electricity except by means of a system approved by the Secretary of State;
  - make provision requiring notice in the prescribed form to be given to the Secretary of State, in such cases as may be specified in the regulations, of accidents and of failures [<sup>F266</sup>in the distribution or transmission] of electricity [<sup>F267</sup>or in the use of electricity interconnectors];
  - make provision as to the keeping, by persons authorised by a licence or exemption to [<sup>F268</sup>distribute] or [<sup>F269</sup>participate in the transmission of] electricity [<sup>F270</sup>or to participate in the operation of an electricity interconnector], of maps, plans and sections and as to their production (on payment, if so required, of a reasonable fee) for inspection or copying;

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- (d) make provision for relieving [<sup>F271</sup>electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system] in such cases as may be prescribed;
  - (e) make provision requiring compliance with notices given by the Secretary of State specifying action to be taken in relation to any electric line or electrical plant, or any electrical appliance under the control of a consumer, for the purpose of—
    - (i) preventing or ending a breach of regulations under this section; or
    - (ii) eliminating or reducing a risk of personal injury or damage to property or interference with its use;
  - (f) provide for particular requirements of the regulations to be deemed to be complied with in the case of any electric line or electrical plant complying with specified standards or requirements;
  - (g) provide for the granting of exemptions from any requirement of the regulations for such periods as may be determined by or under the regulations.
- (3) Regulations under this section may provide that any person—
- (a) who contravenes any specified provision of the regulations; or
  - (b) who does so in specified circumstances,
- shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale; but nothing in this subsection shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.
- (4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the Director of Public Prosecutions.

#### Textual Amendments

- F262** Words in s. 29(1)(b) inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F263** Words in s. 29(1)(b) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(a)**, 198(2); S.I. 2004/2575, art. 2(2), **Sch. 2**
- F264** S. 29(1A) inserted (5.10.2004) by Energy Act 2004 (c. 20), **ss. 94(1)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**
- F265** Words in s. 29(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F266** Words in s. 29(2)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F267** Words in s. 29(2)(b) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(b)**, 198(2); S.I. 2004/2575, art. 2(2), **Sch. 2**
- F268** Words in s. 29(2)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(c)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F269** Words in s. 29(2)(c) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 10**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F270** Words in s. 29(2)(c) inserted (1.12.2004) by Energy Act 2004 (c. 20), **ss. 147(3)(c)**, 198(2); S.I. 2004/2575, art. 2(2), **Sch. 2**
- F271** Words in s. 29(2)(d) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 30(3)(d)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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### 30 Electrical inspectors.

- (1) The Secretary of State may appoint competent and impartial persons to be electrical inspectors under this Part.
- (2) The duties of an electrical inspector under this Part shall be as follows—
  - (a) to inspect and test, periodically and in special cases, electric lines and electrical plant belonging to persons authorised by a licence or exemption to generate, [<sup>F272</sup>distribute or participate in the transmission of] electricity [<sup>F273</sup>or to participate in the operation of electricity interconnectors];
  - (b) to examine, periodically and in special cases, the generation, transmission[<sup>F274</sup>, distribution] or supply of electricity by such persons;
  - (c) to inspect and test, if and when required by any consumer, any such lines and plant on the consumer's premises, for the purpose of determining whether any requirement imposed by or under this Part in respect of the lines or plant or the [<sup>F275</sup>conveyance of electricity through] them has been complied with; and
  - (d) such other duties as may be imposed by regulations under this section or as the Secretary of State may determine.
- (3) The Secretary of State may by regulations—
  - (a) prescribe the manner in which and the times at which any duties are to be performed by electrical inspectors;
  - (b) require persons authorised by a licence or exemption to [<sup>F276</sup>carry on licensable activities]—
    - (i) to furnish electrical inspectors with records or other information; and
    - (ii) to allow such inspectors access to premises and the use of electrical plant and other facilities;
  - (c) make provision for relieving [<sup>F277</sup>electricity distributors from any duty under section 16 or authorising them to disconnect any premises or distribution system] in such cases as may be prescribed; and
  - (d) prescribe the amount of the fees which are to be payable to such inspectors.
- [<sup>F278</sup>(3A) The regulations that may be made under this section include regulations—
  - (a) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain or a Renewable Energy Zone; or
  - (b) making any other provision authorised by this section in relation to activities carried on there.]
- (4) Any fees received by electrical inspectors shall be paid to the Secretary of State; and any sums received by him under this subsection shall be paid into the Consolidated Fund.

#### Textual Amendments

**F272** Words in s. 30(2)(a) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 11](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

**F273** Words in s. 30(2)(a) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\), ss. 147\(4\), 198\(2\)](#); [S.I. 2004/2575, art. 2\(2\), Sch. 2](#)

**F274** Words in s. 30(2)(b) inserted (1.10.2001) by [2000 c. 27, s. 108, Sch. 6 Pt. II para. 31\(2\)\(b\)](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in arts. 3-20)

**F275** Words in s. 30(2)(c) substituted (1.10.2001) by [2000 c. 27, s. 108, Sch. 6 Pt. II para. 31\(2\)\(c\)](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in arts. 3-20)

*Status: Point in time view as at 01/04/2019.*

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- F276** Words in s. 30(3)(b) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F277** Words in s. 30(3)(c) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 31(3)(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F278** S. 30(3A) inserted (5.10.2004) by **Energy Act 2004 (c. 20), ss. 94(2)**, 198(2); S.I. 2004/2575, art. 2(1), Sch. 1

### 31 Use etc. of meters.

The provisions of Schedule 7 to this Act (which relate to the use, certification, testing and maintenance of electricity meters) shall have effect.

#### *Protection of public interest*

### <sup>F279</sup>32 The renewables obligation

- (1) The relevant minister may make a renewables obligation order.
- (2) “The relevant minister” means—
  - (a) in the case of Scotland, the Scottish Ministers,
  - (b) in any other case, the Secretary of State.
- (3) In subsection (2) “Scotland” includes—
  - (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, and
  - (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004 (areas in relation to which Scottish Ministers have functions).
- (4) A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a “designated electricity supplier”).
- (5) The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified.
- (6) The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain.
- (7) Subsection (6) is subject to sections 32A to 32M.

#### Textual Amendments

- F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by **Energy Act 2008 (c. 32), ss. 37, 110(1)(a)** (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)

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### **32A Further provision about the renewables obligation**

- (1) A renewables obligation order may make provision generally in relation to the renewables obligation.
- (2) A renewables obligation order may, in particular, specify—
  - (a) how the number of renewables obligation certificates required to be produced by an electricity supplier in respect of the amount of electricity supplied by it to customers in the relevant part of Great Britain during a specified period is to be calculated;
  - (b) different obligations for successive periods of time;
  - (c) that renewables obligation certificates issued in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,are to count towards discharging an electricity supplier's obligation only up to a specified number, or a specified proportion, of the certificates required to be produced to discharge the obligation;
  - (d) that a specified number, or a specified proportion, of the renewables obligation certificates produced by an electricity supplier when discharging its renewables obligation must be certificates in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating station,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances;
  - (e) how the amount of electricity supplied by an electricity supplier to customers in the relevant part of Great Britain during a specified period is to be calculated;
  - (f) that specified information, or information of a specified nature, is to be given to the Authority;
  - (g) the form in which such information is to be given and the time by which it is to be given.
- (3) A renewables obligation certificate may count once only towards the discharge of the renewables obligation.
- (4) Except as provided by a renewables obligation order, a renewables obligation certificate counts towards discharging the renewables obligation regardless of whether the order under which it is issued is made by the Secretary of State or the Scottish Ministers.
- (5) A renewables obligation order may specify that the only renewables obligation certificates which count towards discharging the renewables obligation are certificates which are issued—
  - (a) in respect of electricity supplied to customers in the relevant part of Great Britain, or
  - (b) in respect of electricity used in a permitted way (within the meaning of section 32B(9) and (10)) in that part of Great Britain.

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- (6) A renewables obligation order may, in relation to any specified period (“the current period”)—
- (a) provide that renewables obligation certificates in respect of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that renewables obligation certificates in respect of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in paragraph (a) or (b);
  - (e) specify a maximum proportion, or maximum number of, the renewables obligation certificates issued in respect of electricity supplied in any period which may be counted towards discharging the renewables obligation for a different period.
- (7) For the purposes of subsection (6) a certificate which certifies that electricity has been used in a permitted way (within the meaning of section 32B(9) and (10)) in a particular period is to be treated as if it were a certificate which certifies that electricity has been supplied in that period.

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37, 110(1)(a)** (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32B Renewables obligation certificates

- (1) A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a renewables obligation certificate”) to—
- (a) the operator of a generating station,
  - (b) an electricity supplier or a Northern Ireland supplier, or
  - (c) if the order so provides, a person of any other description specified in the order.
- (2) A renewables obligation certificate is to certify—
- (a) the matters within subsection (3) or (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6), (7) or (8), the matters within that subsection.
- (3) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (4) The matters within this subsection are—

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- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that the generating station in question is not a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (6) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (7) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) For the purposes of subsections (7) and (8), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (10), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (10) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraph (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or

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- (ii) as respects part, as mentioned in one of the other paragraphs and as respects the remainder as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and as respects the remainder by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (11) For the purposes of subsection (10)(b) electricity is supplied through a private wire network if it is conveyed to premises by a system which is used for conveying electricity from a generating station in circumstances where—
- (a) the operator of the generating station is exempt from section 4(1)(c) and does not hold a supply licence, and
  - (b) the electricity is supplied to one or more customers—
    - (i) by the operator directly, or
    - (ii) by a person to whom the operator supplies the electricity, being a person who is exempt from section 4(1)(c) and does not hold a supply licence.
- (12) In this section “generating station”—
- (a) in the case of an order made by the Scottish Ministers, means a generating station which is situated in Scotland;
  - (b) in the case of an order made by the Secretary of State, means a generating station which is not situated in Scotland.
- (13) For this purpose “Scotland” is to be construed in accordance with section 32(3).

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), [ss. 37, 110\(1\)\(a\)](#) (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32C Section 32B: supplemental provision

- (1) A renewables obligation order may provide—
- (a) that no renewables obligation certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
  - (b) that renewables obligation certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
- (a) electricity generated using specified descriptions of renewable sources,
  - (b) electricity generated by specified descriptions of generating station, or
  - (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—
- (a) provision about how the proportion is to be determined;
  - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;

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- (c) provision authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
  - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
  - (ii) for the results of that analysis to be made available to the Authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
  - (a) partly by renewable sources, and
  - (b) partly by fossil fuel (other than waste which constitutes a renewable source), only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A renewables obligation order may specify—
  - (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of renewables obligation certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequence that no certificates are to be issued in respect of any of the electricity generated by that generating station during that period.
- (7) A renewables obligation order may specify circumstances in which the Authority may revoke a renewables obligation certificate before its production for the purposes of the renewables obligation.
- (8) A renewables obligation order must—
  - (a) prohibit the issue of a renewables obligation certificate certifying matters within section 32B(4) or (6) where the Northern Ireland authority has notified the Authority that it is not satisfied that the electricity in question has been supplied to customers in Northern Ireland, and
  - (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its production for the purposes of the renewables obligation.
- (9) References in section 32B and this section to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.

#### **Textual Amendments**

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37, 110(1)(a)** (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### **32D Amounts of electricity specified in certificates**

- (1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.

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- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a renewables obligation order by virtue of subsection (1).
- (4) Before making any banding provision, the relevant minister must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c. 17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;
  - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, [F44an EU] obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
  - (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the relevant minister, no subsequent order containing such provision may be made by that minister except following a review held by virtue of subsection (8).
- (8) A renewables obligation order—
  - (a) may authorise the relevant minister to review the banding provision at such intervals as are specified in or determined in accordance with the order, and
  - (b) may authorise the relevant minister to review the whole or any part of the banding provision at any time when that minister is satisfied that one or more of the specified conditions is satisfied.

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### Textual Amendments

- F44** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), ss. 37, 110(1)(a) (with s. 38); [S.I. 2009/45](#), art. 3(a) (with art. 5)

## 32E Section 32D: transitional provision and savings

- (1) This section applies where a renewables obligation order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—
  - (a) the electricity generated by generating stations of such a description as may be specified, or
  - (b) so much of that electricity as may be determined in accordance with the order.
- (3) For the purposes of subsection (2) “pre-commencement order” means an order made under section 32 before the coming into force of this section.
- (4) Subsection (6) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (5) The requirements specified under subsection (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the Secretary of State the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the Secretary of State interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined by the Secretary of State, and
  - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (7) If the grant in respect of which an amount falls to be paid under paragraph (a) or (b) of subsection (6) was paid by the Scottish Ministers, the references in those paragraphs to the Secretary of State are to be read as references to those Ministers.
- (8) For the purposes of subsection (6)—
  - (a) “the repayment date” means the date specified in or determined in accordance with the order, and
  - (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;

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and, for the purposes of provision made under that subsection, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.

- (9) In this section “statutory grant” means—
- (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act.
- (10) This section is without prejudice to section 32K(1)(b) (power for renewables obligation order to include transitional provision and savings).

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), [ss. 37, 110\(1\)\(a\)](#) (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32F Use of renewables obligation certificates issued in Northern Ireland

- (1) A renewables obligation order may provide that—
- (a) in such cases as may be specified in the order, and
  - (b) subject to such conditions as may be so specified,
- an electricity supplier may (to the extent provided for in accordance with the order) discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a Northern Ireland certificate.
- (2) In this section “Northern Ireland certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included, by virtue of <sup>F280</sup>[Articles 54 to 54D] of the Energy (Northern Ireland) Order 2003, in an order under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), [ss. 37, 110\(1\)\(a\)](#) (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

**F280** Words in s. 32F(2) substituted (1.4.2009) by [The Energy Act 2008 \(Consequential Amendments\) Order 2009 \(S.I. 2009/556\)](#), arts. 1, [2\(2\)](#)

### 32G Payment as alternative to complying with renewables obligation order

- (1) A renewables obligation order may provide—
- (a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and
  - (b) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day is to be treated as having been discharged to the extent specified in the order where the payment for which the order provides is made to the Authority before the end of the late payment period.

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The order may make provision—
- (a) as to the sum which for the purposes of subsection (1) is to correspond to a renewables obligation certificate,
  - (b) for the sums that must be paid in order for an obligation to be treated as having been discharged to increase at a rate specified in the order for each day after the last discharge day;
  - (c) for different sums or rates falling within paragraph (a) or (b) in relation to different periods;
  - (d) for different such sums or rates in relation to electricity generated in different cases or circumstances specified in the order (including those of a kind referred to in section 32A(2)(c));
  - (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order.
- (3) The method specified under subsection (2)(e) may, in particular, refer to a specified scale or index (as it may have effect from time to time) or to other specified data of any description.
- (4) A renewables obligation order may provide that, where—
- (a) a renewables obligation is one in relation to which provision made by virtue of subsection (1)(b) applies in the case of the electricity supplier who is subject to the obligation, and
  - (b) the period ending with such day (after the last discharge day) as may be specified in or determined under the order has not expired,
- the taking of steps under section 27A in respect of a contravention by that supplier of that obligation is prohibited or otherwise restricted to the extent specified in the order.
- (5) A renewables obligation order may provide that, in a case in which the amount received by the Authority, or by the Northern Ireland authority, by way of discharge payments for a period falls short of the amount due in respect of that period, every person who—
- (a) was subject to a renewables obligation for the relevant period or for a subsequent period specified in or determined under the order, and
  - (b) is of a description so specified or determined,
- must by the time and in the circumstances so specified or determined make a payment (or further payment) to the Authority of an amount calculated in the manner so specified or determined.
- (6) A renewables obligation order may not by virtue of subsection (5) confer an entitlement on the Authority to receive a payment in respect of the shortfall for any period—
- (a) in the case of a shortfall in the amount received by the Authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of subsection (4) applies, in one or more cases, to the taking of steps in relation to contraventions of renewables obligations for that period, or
  - (b) in the case of a shortfall in the amount received by the Northern Ireland authority, if the receipt of the payment is to be while a prohibition or restriction by virtue of a corresponding provision having effect in Northern Ireland applies, in one or more cases, to the taking of steps in relation to contraventions of Northern Ireland obligations for that period.

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (7) The provision that may be made by virtue of subsection (5) includes—
- (a) provision for the making of adjustments and repayments at times after a requirement to make payments in respect of a shortfall for a period has already arisen, and
  - (b) provision that sections 25 to 28 are to apply in relation to a requirement imposed by virtue of that subsection on a person who is not a licence holder as if the person were a licence holder.
- (8) References in this section to an electricity supplier's renewables obligation include references to its renewables obligation in relation to a particular period.
- (9) For the purposes of this section, the amount received by the Authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, the Authority would have received more by way of discharge payments if every renewables obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (10) For the purposes of this section the amount received by the Northern Ireland authority by way of discharge payments for a period falls short of the amount due in respect of that period if, and to the extent that, that authority would have received more by way of discharge payments if every Northern Ireland obligation for that period, so far as not otherwise discharged, had been discharged by payment.
- (11) In this section—
- “discharge payment”, in relation to a period, means—
- (a) a payment by virtue of subsection (1)(a) for discharging (in whole or in part) an electricity supplier's renewables obligation for that period,
  - (b) so much of a payment by virtue of subsection (1)(b) for securing that such an obligation is treated as discharged to any extent as does not exceed the payment that would have discharged that obligation to the same extent if it had been made before the last discharge day, or
  - (c) so much of any payment to the Northern Ireland authority as corresponds in relation to a Northern Ireland obligation for that period, to anything falling within paragraph (a) or (b) above;
- “last discharge day” means the day specified as the day by which renewables obligation certificates must be produced for the purposes of section 32(6);
- “late payment period” means such period beginning with the last discharge day as may be specified;
- “Northern Ireland obligation” means a renewables obligation of a Northern Ireland supplier under Article 52 of the Energy (Northern Ireland) Order 2003;
- “the relevant period”—
- (a) in relation to a shortfall in amounts received by the Authority by way of discharge payments for a period, means that period, and
  - (b) in relation to a shortfall in amounts received by the Northern Ireland authority by way of discharge payments for a period, means any period that includes the whole or a part of that period.

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37**, 110(1)(a) (with s. 38); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32H Allocation of amounts to electricity suppliers

- (1) The amounts received by the Authority by virtue of section 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.
- (2) Subsection (1) does not apply to those amounts to the extent that they are used by the Authority under section 32I.
- (3) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.
- (4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under section 32G(1)(b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under section 32I or already paid under subsection (1)) is less than an amount specified in the order.
- (5) The references in this section to electricity suppliers include references to Northern Ireland suppliers.

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37**, 110(1)(a) (with s. 38); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32I Costs of the Authority and the Northern Ireland authority

- (1) A renewables obligation order may provide for amounts received by the Authority by virtue of section 32G to be used by the Authority—
  - (a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under sections 32 to 32M, or
  - (b) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under Articles 52 to [F<sup>281</sup>55F] of the Energy (Northern Ireland) Order 2003.
- (2) A renewables obligation order—
  - (a) may exclude amounts of a specified description from being used as mentioned in subsection (1);
  - (b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), [ss. 37, 110\(1\)\(a\)](#) (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)
- F281** Word in s. 32I(1)(b) substituted (1.4.2009) by [The Energy Act 2008 \(Consequential Amendments\) Order 2009 \(S.I. 2009/556\)](#), arts. 1, [2\(3\)](#)

### 32J Information

- (1) A renewables obligation order may provide for the Authority to require—
  - (a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation;
  - (b) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.
- (2) That information must be given to the Authority in whatever form it requires.
- (3) A renewables obligation order may—
  - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the Authority to postpone the issue of certificates under section 32B to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
  - (e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.
- (4) The Authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

#### Textual Amendments

- F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), [ss. 37, 110\(1\)\(a\)](#) (with [s. 38](#)); [S.I. 2009/45](#), art. 3(a) (with art. 5)

### 32K Renewables obligation order: general provision

- (1) A renewables obligation order may—

*Status: Point in time view as at 01/04/2019.*

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- (a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;
  - (b) make transitional provision and savings;
  - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
  - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision about the treatment of certificates issued under section 32B before the substitution of that section by section 37 of the Energy Act 2008 [<sup>F282</sup>or certificates referred to in section 38(2)(b) of the Energy Act 2008 (Northern Ireland certificates issued under the Energy (Northern Ireland) Order 2003 before 1st April 2009)].
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
- (a) different provision in relation to different suppliers;
  - (b) different provision in relation to generating stations of different descriptions;
  - (c) different provision in relation to different localities.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\), ss. 37, 110\(1\)\(a\)](#) (with s. 38); [S.I. 2009/45](#), art. 3(a) (with art. 5)

**F282** Words in s. 32K(2) inserted (1.4.2009) by [The Energy Act 2008 \(Consequential Amendments\) Order 2009 \(S.I. 2009/556\)](#), arts. 1, **2(4)**

### 32L Renewables obligation orders: procedure

- (1) Before making a renewables obligation order, the relevant minister must consult—
- (a) the Authority,
  - (b) [<sup>F283</sup>Citizens Advice,
  - (ba) Citizens Advice Scotland,]
  - (c) the electricity suppliers to whom the proposed order would apply,
  - (d) such generators of electricity from renewable sources as the relevant minister considers appropriate, and
  - (e) such other persons, if any, as the relevant minister considers appropriate.
- (2) A renewables obligation order is not to be made by the Secretary of State unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) A renewables obligation order is not to be made by the Scottish Ministers unless a draft of the instrument containing it has been laid before and approved by a resolution of the Scottish Parliament.]

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37, 110(1)(a)** (with s. 38); S.I. 2009/45, art. 3(a) (with art. 5)
- F283** S. 32L(1)(b)(ba) substituted for s. 32L(1)(b) (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(9)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

#### [<sup>F284</sup>32L] **Renewables obligation closure order**

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

#### Textual Amendments

- F284** Ss. 32LA, 32LB inserted (E.W.S.) (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 55(1), 156(3)**

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

- (1) Before making a renewables obligation closure order, the Secretary of State must consult—
  - (a) the Authority,

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- (b) the Council,
  - (c) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (d) such other persons, if any, as the Secretary of State considers appropriate.
- (2) The requirement to consult may be satisfied by consultation before, as well as consultation after, the passing of the Energy Act 2013.
- (3) A renewables obligation closure order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.]

#### Textual Amendments

**F284** Ss. 32LA, 32LB inserted (E.W.S.) (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 55(1), 156(3)**

#### [<sup>F285</sup> **32L** Onshore wind generating stations: closure of renewables obligation

- (1) No renewables obligation certificates are to be issued under a renewables obligation order in respect of electricity generated after the onshore wind closure date by an onshore wind generating station.
- (2) Subsection (1) does not apply to electricity generated in the circumstances set out in any one or more of sections 32LD to 32LL.
- (3) In this section and sections 32LD to 32LL—  
“the onshore wind closure date” means the date on which the Energy Act 2016 is passed;  
“onshore wind generating station” means a generating station that—  
(a) generates electricity from wind, and  
(b) is situated in England, Wales or Scotland, but not in waters in or adjacent to England, Wales or Scotland up to the seaward limits of the territorial sea.
- (4) The reference in subsection (1) to a renewables obligation order is to any renewables obligation order made under section 32 (whenever made, and whether or not made by the Secretary of State).
- (5) Power to make provision in a renewables obligation order or a renewables obligation closure order (and any provision contained in such an order) is subject to subsection (1) and sections 32LD to 32LL.
- (6) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order or renewables obligation closure order.]

#### Textual Amendments

**F285** S. 32LC inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 79(1), 84(1)**

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**[<sup>F286</sup>32LI] Onshore wind generating stations accredited, or additional capacity added, on or before the onshore wind closure date**

The circumstances set out in this section are where the electricity is—

- (a) generated by an onshore wind generating station which was accredited on or before the onshore wind closure date, and
- (b) generated using—
  - (i) the original capacity of the station, or
  - (ii) additional capacity which in the Authority's view first formed part of the station on or before the onshore wind closure date.

**Textual Amendments**

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

**32LE Onshore wind generating stations accredited, or additional capacity added, in the year after the onshore wind closure date: grid or radar delay condition met**

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
  - (i) which was accredited during the period beginning immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date, and
  - (ii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
  - (i) the station was accredited on or before the onshore wind closure date,
  - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning immediately after the onshore wind closure date and ending with the first anniversary of the onshore wind closure date, and
  - (iii) the grid or radar delay condition is met in respect of the additional capacity.

**Textual Amendments**

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

**32LF Onshore wind generating stations accredited, or additional capacity added, on or before 31 March 2017: approved development condition met**

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
  - (i) which was accredited on or before 31 March 2017, and
  - (ii) in respect of which the approved development condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
  - (i) the station was accredited on or before the onshore wind closure date,

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- (ii) in the Authority's view, the additional capacity first formed part of the station on or before 31 March 2017, and
- (iii) the approved development condition is met in respect of the additional capacity.

**Textual Amendments**

**F286** Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), ss. 80(2), 84(1)

**32LG Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 March 2018: grid or radar delay condition met**

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
  - (i) which was accredited during the period beginning with 1 April 2017 and ending with 31 March 2018,
  - (ii) in respect of which the approved development condition is met, and
  - (iii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
  - (i) the station was accredited on or before the onshore wind closure date,
  - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 March 2018,
  - (iii) the approved development condition is met in respect of the additional capacity, and
  - (iv) the grid or radar delay condition is met in respect of the additional capacity.

**Textual Amendments**

**F286** Ss. 32LD-32LL inserted (12.5.2016) by Energy Act 2016 (c. 20), ss. 80(2), 84(1)

**32LH Onshore wind generating stations accredited, or additional capacity added, between 1 April 2017 and 31 January 2018: investment freezing condition met**

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
  - (i) which was accredited during the period beginning with 1 April 2017 and ending with 31 January 2018, and
  - (ii) in respect of which both the approved development condition and the investment freezing condition are met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
  - (i) the station was accredited on or before the onshore wind closure date,
  - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 April 2017 and ending with 31 January 2018, and

*Status: Point in time view as at 01/04/2019.*

*Changes to legislation: Electricity Act 1989, Part I is up to date with all changes known to be in force on or before 13 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity.

#### Textual Amendments

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

### 32LI Onshore wind generating stations accredited, or additional capacity added, between 1 February 2018 and 31 January 2019: grid or radar delay condition met

The circumstances set out in this section are where the electricity is—

- (a) generated using the original capacity of an onshore wind generating station—
- (i) which was accredited during the period beginning with 1 February 2018 and ending with 31 January 2019,
  - (ii) in respect of which both the approved development condition and the investment freezing condition are met, and
  - (iii) in respect of which the grid or radar delay condition is met, or
- (b) generated using additional capacity of an onshore wind generating station, where—
- (i) the station was accredited on or before the onshore wind closure date,
  - (ii) in the Authority's view, the additional capacity first formed part of the station during the period beginning with 1 February 2018 and ending with 31 January 2019,
  - (iii) both the approved development condition and the investment freezing condition are met in respect of the additional capacity, and
  - (iv) the grid or radar delay condition is met in respect of the additional capacity.

#### Textual Amendments

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

### 32LJ The approved development condition

- (1) This section applies for the purposes of sections 32LF to 32LI.
- (2) The approved development condition is met in respect of an onshore wind generating station if the documents specified in subsections (4), (5) and (6) were provided to the Authority with the application for accreditation of the station.
- (3) The approved development condition is met in respect of additional capacity if the documents specified in subsections (4), (5) and (6) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.
- (4) The documents specified in this subsection are—
  - (a) evidence that—
    - (i) planning permission for the station or additional capacity was granted on or before 18 June 2015, and

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*Status: Point in time view as at 01/04/2019.*

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- (ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,
  - (b) evidence that—
    - (i) planning permission for the station or additional capacity was refused on or before 18 June 2015, but granted after that date following an appeal or judicial review, and
    - (ii) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,
  - (c) evidence that—
    - (i) an application for 1990 Act permission or 1997 Act permission was made on or before 18 June 2015 for the station or additional capacity,
    - (ii) the period allowed under section 78(2) of the 1990 Act or (as the case may be) section 47(2) of the 1997 Act ended on or before 18 June 2015 without any of the things mentioned in section 78(2)(a) to (b) of the 1990 Act or section 47(2)(a) to (c) of the 1997 Act being done in respect of the application,
    - (iii) the application was not referred to the Secretary of State, Welsh Ministers or Scottish Ministers in accordance with directions given under section 77 of the 1990 Act or section 46 of the 1997 Act,
    - (iv) 1990 Act permission or 1997 Act permission was granted after 18 June 2015 following an appeal, and
    - (v) any conditions as to the time period within which the development to which the permission relates must be begun have not been breached,or
  - (d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, planning permission is not required for the station or additional capacity.
- (5) The documents specified in this subsection are—
  - (a) a copy of an offer from a licensed network operator made on or before 18 June 2015 to carry out grid works in relation to the station or additional capacity, and evidence that the offer was accepted on or before that date (whether or not the acceptance was subject to any conditions or other terms), or
  - (b) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, no grid works were required to be carried out by a licensed network operator in order to enable the station to be commissioned or the additional capacity to form part of the station.
- (6) The documents specified in this subsection are a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at 18 June 2015 a relevant developer of the station or additional capacity (or a person connected, within the meaning of section 1122 of the Corporation Tax Act 2010, with a relevant developer of the station or additional capacity)—
  - (a) was an owner or lessee of the land on which the station or additional capacity is situated,
  - (b) had entered into an agreement to purchase or lease the land on which the station or additional capacity is situated,
  - (c) had an option to purchase or to lease the land on which the station or additional capacity is situated, or
  - (d) was a party to an exclusivity agreement in relation to the land on which the station or additional capacity is situated.

*Status: Point in time view as at 01/04/2019.*

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(7) In this section—

“the 1990 Act” means the Town and Country Planning Act 1990;

“1990 Act permission” means planning permission under the 1990 Act (except outline planning permission, within the meaning of section 92 of that Act);

“the 1997 Act” means the Town and Country Planning (Scotland) Act 1997;

“1997 Act permission” means planning permission under the 1997 Act (except planning permission in principle, within the meaning of section 59 of that Act);

“exclusivity agreement”, in relation to land, means an agreement by the owner or a lessee of the land not to permit any person (other than the persons identified in the agreement) to construct an onshore wind generating station on the land;

“planning permission” means—

- (a) consent under section 36 of this Act,
- (b) 1990 Act permission,
- (c) 1997 Act permission, or
- (d) development consent under the Planning Act 2008.

#### Textual Amendments

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. **80(2)**, 84(1)

### 32LK The investment freezing condition

- (1) This section applies for the purposes of sections 32LH and 32LI.
- (2) The investment freezing condition is met in respect of an onshore wind generating station if the documents specified in subsection (4) were provided to the Authority with the application for accreditation of the station.
- (3) The investment freezing condition is met in respect of additional capacity if the documents specified in subsection (4) were provided to the Authority on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station.
- (4) The documents specified in this subsection are—
  - (a) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, as at the Royal Assent date—
    - (i) the relevant developer required funding from a recognised lender before the station could be commissioned or additional capacity could form part of the station,
    - (ii) a recognised lender was not prepared to provide that funding until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted, and
    - (iii) the station would have been commissioned, or the additional capacity would have formed part of the station, on or before 31 March 2017 if the funding had been provided before the Royal Assent date, and
  - (b) a letter or other document, dated on or before the date which is 28 days after the Royal Assent date, from a recognised lender confirming (whether or not

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the confirmation is subject to any conditions or other terms) that the lender was not prepared to provide funding in respect of the station or additional capacity until enactment of the Energy Act 2016, because of uncertainty over whether the Act would be enacted or its wording if enacted.

(5) In this section—

“recognised lender” means a provider of debt finance which has been issued with an investment grade credit rating by a registered credit rating agency;

“the Royal Assent date” means the date on which the Energy Act 2016 is passed.

(6) For the purposes of the definition of “recognised lender” in subsection (5)—

“investment grade credit rating” means a credit rating commonly understood by registered credit rating agencies to be investment grade;

“registered credit rating agency” means a credit rating agency registered in accordance with Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies.

#### Textual Amendments

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

### 32LL The grid or radar delay condition

- (1) This section applies for the purposes of sections 32LE, 32LG and 32LI.
- (2) The grid or radar delay condition is met in respect of an onshore wind generating station if, on or before the date on which the Authority made its decision to accredit the station, the documents specified in subsection (4), (5) or (6) were—
  - (a) submitted by the operator of the station, and
  - (b) received by the Authority.
- (3) The grid or radar delay condition is met in respect of additional capacity if, on or before the date on which the Authority made its decision that the additional capacity could form part of an onshore wind generating station, the documents specified in subsection (4), (5) or (6) were—
  - (a) submitted by the operator of the station, and
  - (b) received by the Authority.
- (4) The documents specified in this subsection are—
  - (a) evidence of an agreement with a network operator (“the relevant network operator”) to carry out grid works in relation to the station or additional capacity (“the relevant grid works”);
  - (b) a copy of a document written by, or on behalf of, the relevant network operator which estimated or set a date for completion of the relevant grid works (“the planned grid works completion date”) which was no later than the primary date;
  - (c) a letter from the relevant network operator confirming (whether or not such confirmation is subject to any conditions or other terms) that—

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- (i) the relevant grid works were completed after the planned grid works completion date, and
    - (ii) in the relevant network operator's opinion, the failure to complete the relevant grid works on or before the planned grid works completion date was not due to any breach by a generating station developer of any agreement with the relevant network operator; and
  - (d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant grid works had been completed on or before the planned grid works completion date.
- (5) The documents specified in this subsection are—
- (a) evidence of an agreement between a generating station developer and a person who is not a generating station developer (“the radar works agreement”) for the carrying out of radar works (“the relevant radar works”);
  - (b) a copy of a document written by, or on behalf of, a party to the radar works agreement (other than a generating station developer) which estimated or set a date for completion of the relevant radar works (“the planned radar works completion date”) which was no later than the primary date;
  - (c) a letter from a party to the radar works agreement (other than a generating station developer) confirming, whether or not such confirmation is subject to any conditions or other terms, that—
    - (i) the relevant radar works were completed after the planned radar works completion date, and
    - (ii) in that party's opinion, the failure to complete the relevant radar works on or before the planned radar works completion date was not due to any breach of the radar works agreement by a generating station developer; and
  - (d) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if the relevant radar works had been completed on or before the planned radar works completion date.
- (6) The documents specified in this subsection are—
- (a) the documents specified in subsection (4)(a), (b) and (c);
  - (b) the documents specified in subsection (5)(a), (b) and (c); and
  - (c) a declaration by the operator of the station that, to the best of the operator's knowledge and belief, the station would have been commissioned, or the additional capacity would have formed part of the station, on or before the primary date if—
    - (i) the relevant grid works had been completed on or before the planned grid works completion date, and
    - (ii) the relevant radar works had been completed on or before the planned radar works completion date.
- (7) In this section “the primary date” means—
- (a) in a case within section 32LE(a)(i) or (b)(i) and (ii), the onshore wind closure date;
  - (b) in a case within section 32LG(a)(i) and (ii) or (b)(i) to (iii), 31 March 2017;

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(c) in a case within section 32LI(a)(i) and (ii) or (b)(i) to (iii), 31 January 2018.]

**Textual Amendments**

**F286** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

[<sup>F287</sup>**32LN Use of Northern Ireland certificates: onshore wind power**

- (1) The Secretary of State may make regulations providing that an electricity supplier may not discharge its renewables obligation (or its obligation in relation to a particular period) by the production to the Authority of a relevant Northern Ireland certificate, except in the circumstances, and to the extent, specified in the regulations.
- (2) A “relevant Northern Ireland certificate” is a Northern Ireland certificate issued in respect of electricity generated after the onshore wind closure date (or any later date specified in the regulations)—
  - (a) using the original capacity of a Northern Ireland onshore wind generating station accredited after the onshore wind closure date (or any later date so specified), or
  - (b) using additional capacity of a Northern Ireland onshore wind generating station, where in the Authority's view the additional capacity first formed part of the station after the onshore wind closure date (or any later date so specified).
- (3) In this section—

“NIRO Order” means any order made under Articles 52 to 55F of the Energy (Northern Ireland) Order 2003;

“Northern Ireland certificate” means a renewables obligation certificate issued by the Northern Ireland authority under the Energy (Northern Ireland) Order 2003 and pursuant to a NIRO Order;

“Northern Ireland onshore wind generating station” means a generating station that—

  - (a) generates electricity from wind, and
  - (b) is situated in Northern Ireland, but not in waters in or adjacent to Northern Ireland up to the seaward limits of the territorial sea.
- (4) Power to make provision in a renewables obligation order by virtue of section 32F (and any provision contained in such an order) is subject to provision contained in regulations under this section.
- (5) This section is not otherwise to be taken as affecting power to make provision in a renewables obligation order.
- (6) Regulations under this section may amend a renewables obligation order.
- (7) Section 32K applies in relation to regulations under this section as it applies in relation to a renewables obligation order.]

**Textual Amendments**

**F287** S. 32LM inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 81(2), 84(1)

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## [<sup>F279</sup>32M Interpretation of sections 32 to 32M

(1) In this section and sections 32 to [<sup>F288</sup>32LM]—

[<sup>F289</sup>“accredited”, in relation to an onshore wind generating station, means accredited by the Authority as a generating station which is capable of generating electricity from renewable sources; and “accredit” and “accreditation” are to be construed accordingly;]

[<sup>F289</sup>“additional capacity”, in relation to an onshore wind generating station, means any generating capacity which does not form part of the original capacity of the station;]

“banding provision” is to be construed in accordance with section 32D(3);

[<sup>F290</sup>“bioliquid” has the meaning given by Article 2(h) of Directive 2009/28/EC of the European Parliament and of the Council on the promotion of the use of energy from renewable sources;]

[<sup>F289</sup>“commissioned”, in relation to an onshore wind generating station, means having completed such procedures and tests in relation to the station as constitute, at the time they are undertaken, the usual industry standards and practices for commissioning that type of generating station in order to demonstrate that it is capable of commercial operation]

“fossil fuel” means—

- (a) coal,
- (b) lignite,
- (c) natural gas (within the meaning of the Energy Act 1976),
- (d) crude liquid petroleum,
- (e) petroleum products (within the meaning of that Act), or
- (f) any substance [<sup>F290</sup>, other than bioliquid,] produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);

“generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions are to be construed accordingly;

[<sup>F289</sup>“generating station developer”, in relation to an onshore wind generating station or additional capacity, means—

- (a) the operator of the station, or
- (b) a person who arranged for the construction of the station or additional capacity;]

[<sup>F289</sup>“grid works”, in relation to an onshore wind generating station, means—

- (a) the construction of a connection between the station and a transmission or distribution system for the purpose of enabling electricity to be conveyed from the station to the system, or
- (b) the carrying out of modifications to a connection between the station and a transmission or distribution system for the purpose of enabling an increase in the amount of electricity that can be conveyed over that connection from the station to the system;]

[<sup>F289</sup>“licensed network operator” means a distribution licence holder or a transmission licence holder;]

[<sup>F289</sup>“network operator” means a distribution exemption holder, a distribution licence holder or a transmission licence holder;]

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“Northern Ireland authority” means the Northern Ireland Authority for Utility Regulation;

“Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003;

[<sup>F289</sup>“the onshore wind closure date” has the meaning given by section 32LC(3);]

[<sup>F289</sup>“onshore wind generating station” has the meaning given by section 32LC(3);]

[<sup>F289</sup>“original capacity”, in relation to an onshore wind generating station, means the generating capacity of the station as accredited;]

[<sup>F289</sup>“radar works” means—

- (a) the construction of a radar station,
- (b) the installation of radar equipment,
- (c) the carrying out of modifications to a radar station or radar equipment, or
- (d) the testing of a radar station or radar equipment;]

[<sup>F289</sup>“relevant developer”, in relation to an onshore wind generating station or additional capacity, means a person who—

- (a) applied for planning permission for the station or additional capacity,
- (b) arranged for grid works to be carried out in relation to the station or additional capacity,
- (c) arranged for the construction of any part of the station or additional capacity,
- (d) constructed any part of the station or additional capacity, or
- (e) operates, or proposes to operate, the station;]

“the relevant minister” has the meaning given by section 32;

“the relevant part of Great Britain” means—

- (a) in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales);
- (b) in the case of a renewables obligation order made by the Scottish Ministers, Scotland (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland);

“the renewables obligation” is to be construed in accordance with section 32(4);

“renewables obligation certificate” is to be construed in accordance with section 32B;

“renewables obligation order” is to be construed in accordance with section 32;

[<sup>F291</sup>“renewables obligation closure order” is to be construed in accordance with section 32LA;]

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a renewables obligation order [<sup>F292</sup> or a renewables obligation closure order], means specified in the order.

- (2) For the purposes of the definition of “renewable sources”, a renewables obligation order may make provision—

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- (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
    - (ii) for the results of that analysis to be made available to the Authority.
- (3) For the purposes of the definition of “the relevant part of Great Britain”, the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland.
- (4) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section and sections 32 to 32L if, or to the extent that, the Order is expressed to apply—
- (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (5) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the order or Order in Council is expressed to apply—
- (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (6) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
- (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (7) A renewables obligation order may make provision, for the purposes of sections 32 to [F293 32LM], about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
  - (b) to customers in the relevant part of Great Britain;
  - (c) to customers in Northern Ireland.]

#### Textual Amendments

**F279** Ss. 32-32M substituted for (26.11.2008 for specified purposes, 1.4.2009 in so far as not already in force) by [Energy Act 2008 \(c. 32\)](#), **ss. 37**, 110(1)(a) (with s. 38); [S.I. 2009/45](#), art. 3(a) (with art. 5)

**F288** Word in s. 32M(1) substituted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 81(3)(a)**, 84(1)

**F289** Words in s. 32M inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 80(3)(b)**, 84(1)

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**F290** S. 32M(1) words inserted (1.4.2011) by [The Renewables Obligation \(Amendment\) Order 2011 \(S.I. 2011/984\)](#), arts. 1(1), 2

**F291** Words in s. 32M(1) inserted (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), ss. 55(2)(b), 156(3)

**F292** Words in s. 32M(1) inserted (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), ss. 55(2)(c), 156(3)

**F293** Word in s. 32M(7) substituted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 81(3)(b), 84(1)

## [<sup>F294</sup> 32N The certificate purchase obligation

- (1) The Secretary of State may make a certificate purchase order.
- (2) A certificate purchase order is an order which imposes the certificate purchase obligation on—
  - (a) the purchasing body of GB certificates;
  - (b) the purchasing body of NI certificates.
- (3) The certificate purchase obligation is that—
  - (a) the purchasing body of GB certificates must pay the redemption value of a GB certificate to the person presenting it;
  - (b) the purchasing body of NI certificates must pay the redemption value of a NI certificate to the person presenting it.
- (4) The purchasing body of GB certificates is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of GB certificates.
- (5) The purchasing body of NI certificates is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the purchasing body of NI certificates.
- (6) A person is an “eligible person” for the purposes of designation under subsection (4)
  - (b) if the person is—
    - (a) a CFD counterparty at the time when the designation is made, or
    - (b) the Secretary of State.
- (7) A person is an “eligible person” for the purposes of designation under subsection (5)
  - (b) if the person is a CFD counterparty at the time when the designation is made.
- (8) Subsection (3) is subject to sections 32O to 32Z2.

### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 56(2), 156(2)

## 32O Further provision about the certificate purchase obligation

- (1) A certificate purchase order may make provision generally in relation to the certificate purchase obligation.
- (2) A certificate purchase order may, in particular—

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- (a) specify the redemption value of certificates or provide for how the redemption value is to be calculated;
- (b) provide for different redemption values for successive periods of time;
- (c) authorise the adjustment of redemption values from time to time for inflation by a method specified in the order (including by reference to a specified scale or index, as it has effect from time to time, or to other specified data of any description);
- (d) require the relevant purchasing body or the Secretary of State (if not the relevant purchasing body) to publish the redemption value of certificates by a specified deadline;
- (e) provide for the manner in which a certificate is to be presented to the relevant purchasing body;
- (f) provide for the certificate purchase obligation in relation to certificates issued in respect of electricity generated—
  - (i) using specified descriptions of renewable sources,
  - (ii) by specified descriptions of generating stations,
  - (iii) in specified ways, or
  - (iv) in other specified cases or circumstances,
 to apply only up to a specified number of the certificates that are presented for payment in any specified period;
- (g) provide that certificates in respect of electricity generated—
  - (i) using specified descriptions of renewable sources,
  - (ii) by specified descriptions of generating stations,
  - (iii) in specified ways, or
  - (iv) in other specified cases or circumstances,
 are to be issued only up to such number of certificates in any specified period as may be specified or determined in accordance with the order;
- (h) provide that the certificate purchase obligation is not to apply on presentation of a certificate unless—
  - (i) the certificate is presented by such a deadline as may be specified or determined in accordance with the order, and
  - (ii) any other specified conditions are met (whether in relation to the certificate, the person presenting it or other matters);
- (i) provide for how the relevant purchasing body is to determine whether specified conditions are met;
- (j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;
- (k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;
- (l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;
- (m) provide for a certificate purchase levy (see section 32P);
- (n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;
- (o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.

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- (3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(l)), the certificate purchase obligation in relation to that certificate is discharged (and the certificate is not to be presented for payment again).
- (4) For the purposes of carrying out its functions under a certificate purchase order, the relevant purchasing body may—
  - (a) require a person presenting a certificate to provide such information or documentation as the body may reasonably need for such purposes, and
  - (b) determine the form in which, and the time by which, such information or documentation is to be supplied.
- (5) The certificate purchase obligation does not apply in relation to a certificate unless the person presenting the certificate has complied with any requirements imposed under subsection (4).

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2), 156(2)**

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

- (1) A certificate purchase order may provide for a certificate purchase levy to be charged in connection with the provision of payments to the relevant purchasing body.
- (2) A certificate purchase levy is a levy—
  - (a) charged in respect of supplies of electricity that have been, or are expected to be, made in each specified period, and
  - (b) payable in respect of each such period by persons who make, or are expected to make, the supplies.
- (3) The order may (without limiting the generality of section 32Z(1)(d)) provide for different rates or different amounts of levy to be charged—
  - (a) in different cases or circumstances;
  - (b) in relation to different specified periods.
- (4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.
- (6) The order may, in particular, make provision about any of the following matters—
  - (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) the rates or amounts of the levy, or how such rates or amounts are to be determined;
  - (e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;

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

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- (b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2), 156(2)**

### 32Q Use of levy payments

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

*Status: Point in time view as at 01/04/2019.*

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- (a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);
  - (b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);
  - (c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).
- (8) The order—
- (a) may exclude amounts of a specified description from being used as mentioned in subsection (6);
  - (b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.
- (9) The purchasing body of GB certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of GB certificates.
- (10) The purchasing body of NI certificates must, if directed to do so by the Secretary of State, pay into the Consolidated Fund of Northern Ireland any amounts received under subsection (2) that it would (but for the direction) be able to use under subsection (3) for the purpose of discharging the purchase obligation in respect of NI certificates.
- (11) In this section “the order”, in relation to the certificate purchase levy, means the certificate purchase order that imposes the levy.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

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

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

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to have effect, are to be discharged in any period before or after the time when the designation ceases to have effect.

- (7) Subsection (5) is not to be taken as limiting the power to make transitional provision in a certificate purchase order by virtue of section 32Z(1)(b).

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 56(2), 156(2)

### 32S GB certificates

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a GB certificate”) to—
- (a) the operator of a generating station, or
  - (b) if the order so provides, a person of any other description specified in the order.
- (2) A GB certificate is to certify—
- (a) the matters within subsection (4) or (5), or
  - (b) if the order provides that a certificate may certify the matters within subsection (6), (7), (8) or (9), the matters within that subsection.
- (3) A GB certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
- (a) a renewables obligation order is in force, and
  - (b) a renewables obligation certificate has been, or could be, issued under the order in respect of the generation in that period of the same electricity.
- (4) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (5) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that the generating station in question is not in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.

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- (7) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (8) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (10) For the purposes of subsections (8) and (9), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (11), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (11) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or
    - (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (12) Subsection (11) of section 32B (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (11)(b) as it applies for the purposes of subsection (10)(b) of that section.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

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### **32T NI certificates**

- (1) A certificate purchase order may (subject to subsection (3)) provide for the Northern Ireland authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a NI certificate”) to—
  - (a) the operator of a generating station in Northern Ireland, or
  - (b) if the order so provides, a person of any other description.
- (2) A NI certificate is to certify—
  - (a) the matters within subsection (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6) or (7), the matters within that subsection.
- (3) A NI certificate certifying that an amount of electricity has been generated from renewable sources in any period may not be issued if—
  - (a) an order under Article 52 of the Energy (Northern Ireland) Order 2003 is in force, and
  - (b) a Northern Ireland RO certificate has been, or could be, issued under that order in respect of the same electricity.
- (4) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (7) The matters within this subsection are—
  - (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) For the purposes of subsections (6) and (7), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
  - (a) it is used in one of the ways mentioned in subsection (9), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or

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(ii) in relation to generating stations of that description.

(9) Those ways are—

- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
- (b) being supplied to customers in Northern Ireland through a private wire network;
- (c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;
- (d) being used, as respects part, as mentioned in one of paragraphs (a), (b) or (c) and as respects the remainder—
  - (i) as mentioned in one of the other paragraphs, or
  - (ii) as respects part, as mentioned in one of the other paragraphs and, as respects the remainder, as mentioned in the other;
- (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and, as respects the remainder, by being supplied by a Northern Ireland supplier to customers in Northern Ireland.

(10) Paragraph (9) of Article 54 of the Energy (Northern Ireland) Order 2003 (meaning of supply of electricity through a private wire network) applies for the purposes of subsection (9)(b) as it applies for the purposes of paragraph (8)(b) of that Article.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

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

(1) A certificate purchase order may provide—

- (a) that no certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
- (b) that certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.

(2) In particular, provision made by virtue of subsection (1) may specify—

- (a) electricity generated using specified descriptions of renewable sources,
- (b) electricity generated by specified descriptions of generating station, or
- (c) electricity generated in specified ways.

(3) Provision made by virtue of subsection (1)(b) may include—

- (a) provision about how the proportion is to be determined;
- (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
- (c) provision authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
  - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such

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

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- (13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2), 156(2)**

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

- (1) A certificate purchase order may specify the amount of electricity to be stated in each certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a certificate purchase order by virtue of subsection (1).
- (4) Before making any banding provision, the Secretary of State must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (supplies of electricity from renewable sources exempted from the climate change levy) in relation to electricity generated from each of those sources;
  - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of certificate issued by the relevant authority, and the impact this will have on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, an EU obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
  - (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;

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- (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).
- (8) A certificate purchase order may authorise the Secretary of State to review the whole or any part of the banding provision at any time when the Secretary of State is satisfied that one or more of the specified conditions is satisfied.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), [ss. 56\(2\)](#), [156\(2\)](#)

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

- (1) This section applies where a certificate purchase order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier such order to continue, in such circumstances as may be specified, in relation to—
  - (a) the electricity generated by generating stations of such descriptions as may be specified, or
  - (b) so much of the electricity as may be determined in accordance with the order.
- (3) The order may provide for—
  - (a) the effect of any banding provision made in a renewables obligation order by virtue of section 32D(1) to apply, in such circumstances as may be specified, in relation to GB certificates as it applied in relation to renewables obligation certificates;
  - (b) the effect of any banding provision made in an order under Article 52 of the Energy (Northern Ireland) Order 2003, by virtue of Article 54B(1) of the Order, to apply, in such circumstances as may be specified, in relation to NI certificates as it applied in relation to Northern Ireland RO certificates.
- (4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.
- (5) Subsection (7) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (7) A certificate purchase order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the person who made the grant (“the payer”) the whole or a specified part of the grant or part before the repayment date,

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- (b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and
  - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (8) For the purposes of subsection (7)—
- (a) “the repayment date” means the date specified in or determined in accordance with the order, and
  - (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid.
- (9) In this section “statutory grant” means—
- (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act or other statutory provision (as defined by section 1(f) of the Interpretation Act (Northern Ireland) 1954).
- (10) This section is without prejudice to section 32Z(1)(b).

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2), 156(2)**

### 32X Certificate purchase orders: information

- (1) A certificate purchase order may provide for—
- (a) the Authority to require a person to provide it with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a GB certificate is, or was or will in future be, required to be issued to the person;
  - (b) the Northern Ireland authority to require a person to provide it with information, or with information of a particular kind, which in the authority's opinion is relevant to the question whether a NI certificate is, or was or will in future be, required to be issued to the person.
- (2) That information must be given to the relevant authority in whatever form it requires.
- (3) A certificate purchase order may—
- (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the relevant authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the relevant authority to postpone the issue of certificates to the operator of a generating station who fails to comply with a requirement

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- imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
- (e) authorise or require the relevant authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a specified period.
- (4) The relevant authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

### 32Y Certificate purchase orders: corresponding provision

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

<i>Listed power</i>	<i>Equivalent GB power</i>	<i>Equivalent NI power</i>
Section 32O(2)(a)	Sections 32A(2)(a) and 32G(2)(a)	Articles 53(2)(a) and 55(2)(a)
Section 32O(2)(b)	Sections 32A(2)(b) and 32G(2)(c)	Articles 53(2)(b) and 55(2)(c)

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Section 32O(2)(c)	Section 32G(2)(e)	Article 55(2)(e)
Section 32O(2)(f)	Section 32A(2)(c)	Article 53(2)(c)
Section 32S	Section 32B	---
Section 32T	---	Article 54
Section 32U(5) and (6)	Section 32C(5) and (6)	Article 54A(5) and (6)
Section 32V(1)	Section 32D(1)	Article 54B(1)
Section 32W(5) to (8)	Section 32E(4) to (6) and (8)	Article 54C(4) to (7)
Section 32X	Section 32J	Article 55C
Section 32Z2(2) (so far as relating to definition of “renewable sources”) and (3)	Section 32M (so far as relating to that definition) and (2)	Article 55F(1) (so far as relating to that definition) and (2)
Section 32Z2(9)	Section 32M(7)	Article 55F(3)

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

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), [ss. 56\(2\)](#), [156\(2\)](#)

### 32Z Certificate purchase orders: general provision

- (1) A certificate purchase order may—
- make further provision as to the functions of the relevant authority in relation to matters dealt with by the order;
  - make transitional provision and savings;
  - provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with

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- such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
- (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision for—
- (a) renewables obligation certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were GB certificates issued in respect of a subsequent period for which the order is in force;
- (b) Northern Ireland RO certificates issued in respect of a period before the imposition of the certificate purchase obligation to be treated as if they were NI certificates issued in respect of a subsequent period for which the order is in force.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
- (a) different provision in relation to different suppliers;
- (b) different provision in relation to generating stations of different descriptions;
- (c) different provision in relation to different localities or different parts of the United Kingdom.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.
- (5) The Authority and the Northern Ireland authority may enter into arrangements for the Authority to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions conferred on the Northern Ireland authority under, or for the purposes of, a certificate purchase order.
- (6) The duties imposed on the Secretary of State—
- (a) by section 3A (principal objective and general duties in carrying out functions under this Part), and
- (b) by section 132(2) of the Energy Act 2013 (duties in relation to strategy and policy statement),
- do not apply in relation to the exercise of a power under section 32N to make a certificate purchase order so far as it is made for or in connection with imposing the certificate purchase obligation on the purchasing body of NI certificates.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 56(2), 156(2)

### 32Z1 Certificate purchase orders: procedure

- (1) Before making a certificate purchase order, the Secretary of State must consult—
- (a) the Authority,
- (b) the Northern Ireland authority,
- (c) the Council,
- (d) the General Consumer Council for Northern Ireland,

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- (e) such electricity suppliers and Northern Ireland suppliers that may be required to pay the certificate purchase levy as the Secretary of State considers appropriate,
  - (f) such generators of electricity from renewable sources as the Secretary of State considers appropriate, and
  - (g) such other persons, if any, as the Secretary of State considers appropriate.
- (2) A certificate purchase order is not to be made unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) The Secretary of State must, subject to subsection (5), consult the Scottish Ministers before making a certificate purchase order that extends to Scotland.
- (4) The Secretary of State must, subject to subsection (5), obtain the consent of the Northern Ireland department before making a certificate purchase order that extends to Northern Ireland.
- (5) Except as provided by subsection (6), the Secretary of State is not required to—
- (a) consult the Scottish Ministers under subsection (3), or
  - (b) obtain the consent of the Northern Ireland department under subsection (4),
- in respect of any provision of a certificate purchase order that is made by virtue of section 32O(2)(m), 32P or 32Q (which together confer power to make provision about the certificate purchase levy).
- (6) Designation of the Northern Ireland department as the administrator of the certificate purchase levy by virtue of section 32P(8)(b) requires the consent of that department.

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2), 156(2)**

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

- (1) In this section and sections 32N to 32Z1 (“the relevant sections”), the following terms have the meanings given in section 32M(1)—
- “fossil fuel” (but see subsection (4));
  - “generated”;
  - “Northern Ireland authority”;
  - “Northern Ireland supplier”;
  - “renewables obligation certificate”;
  - “renewables obligation order”.
- (2) In the relevant sections—
- “administrator”, in relation to the certificate purchase levy, is to be construed in accordance with section 32P(7) to (10);
  - “banding provision” is to be construed in accordance with section 32V(3);
  - “CFD counterparty” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2013 (see section 7 of that Act);
  - “certificate purchase levy” is to be construed in accordance with section 32P;

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“certificate purchase order” is to be construed in accordance with section 32N;

“the certificate purchase obligation” is to be construed in accordance with section 32N(3);

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

“GB certificate” is to be construed in accordance with section 32S;

“NI certificate” is to be construed in accordance with section 32T;

“the Northern Ireland department” means the Department of Enterprise, Trade and Investment;

“Northern Ireland RO certificate” means a certificate issued by the Northern Ireland authority in accordance with provision included in an order under Article 52 of the Energy (Northern Ireland) Order 2003;

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

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

“relevant authority” means—

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

“relevant purchasing body” means—

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

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a certificate purchase order, means specified in the order;

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

- (3) For the purposes of the definition of “renewable sources”, a certificate purchase order may make provision—
- (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority;
    - (ii) for the results of that analysis to be made available to the relevant authority.

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- (4) In the application of the relevant sections to Northern Ireland, “fossil fuel” includes peat.
- (5) In the relevant sections “Northern Ireland” does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).
- (6) A certificate purchase order may provide that “Northern Ireland” includes the territorial sea adjacent to Northern Ireland.
- (7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
- (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (8) References in the relevant sections to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.
- (9) A certificate purchase order may make provision, for the purposes of the relevant sections, about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
  - (b) to customers in Northern Ireland.]

#### Textual Amendments

**F294** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

**F295**<sup>33</sup> .....

#### Textual Amendments

**F295** S. 33 ceased to have effect (21.11.2000) by virtue of [2000 c. 27, s. 66](#); [S.I. 2000/2414, art. 2](#) (subject to saving in [art. 3\(2\)](#)) and s. 33 repealed (1.10.2001) by [2000 c. 27, s. 108, Sch. 8](#); [S.I. 2001/3266, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-20](#))

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

- C54** S. 33 saved (with modifications) (27.10.2000 with effect on 21.11.2000) by [S.I. 2000/2727, art. 11](#); and, as so saved, further modified (E.W.) (1.10.2001) by [S.I. 2001/3268, art. 3](#) and (S.) (1.10.2001) by [S.I. 2001/3269, art. 9](#); and, as so saved, further modified (E.W.) (30.12.2001) by [S.I. 2001/3914, art. 2](#); and, as so saved, further modified (S.) (31.3.2002) by [S.S.I. 2002/92, art. 2\(2\)](#)
- C55** S. 33 applied (2.10.2001) by [S.I. 1990/266, reg. 2\(1\)](#) (as inserted (2.10.2001) by [S.I. 2001/3286, reg. 3\(4\)](#))
- C56** S. 33 as saved modified (S.) (30.11.2005) by [The Electricity from Non-Fossil Fuel Sources \(Scotland\) Saving Arrangements Order 2005 \(S.S.I. 2005/549\)](#), [arts. 1\(1\), 10](#)

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### **34 Fuel stocks etc. at generating stations.**

- (1) This section applies to any generating station which—
  - (a) is of a capacity not less than 50 megawatts; and
  - (b) is fuelled otherwise than by waste or manufactured gases;and in this subsection “waste” has the same meaning as in the <sup>M5</sup>Control of Pollution Act 1974.
- (2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.
- (3) In respect of any generating station to which this section applies, the Secretary of State may give a direction requiring the person who operates it—
  - (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
    - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
    - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under subsection (4) below;
  - (b) to create such stocks and make such arrangements with respect to them;and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.
- (4) In respect of any generating station to which this section applies, the Secretary of State may give a direction—
  - (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
  - (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.
- (5) In subsections (3) and (4) above “specified” means specified by or under the Secretary of State’s direction; and a direction may—
  - (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
  - (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers;
  - (c) specify the manner in which any period mentioned in subsection (3) or (4) above is to be determined;
  - (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.
- (6) A direction under subsection (3) or (4) above which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function in such manner as may be specified by the direction.

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

**C57** S. 34: transfer of certain functions (S.) (1.7.1999) by **S.I. 1999/1750**, arts. 1, 2, **Sch. 1** (with art. 7)

*Status: Point in time view as at 01/04/2019.*

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**C58** By S.I. 1990/1066, **art. 2** it is provided that s. 34(1) shall have effect as if for the capacity of 50 megawatts mentioned in para. (a), there were substituted the capacity of 10 megawatts

#### Marginal Citations

**M5** 1974 c. 40.

### 35 Provisions supplementary to section 34.

- (1) The Secretary of State may give a direction requiring [<sup>F296</sup>the holder of a transmission licence] to give to the Secretary of State, after consultation with specified persons, any information or advice which the Secretary of State may reasonably require for purposes connected with the exercise of his functions under section 34 above.
- [<sup>F297</sup>(2) The Secretary of State may give a direction requiring any person who is authorised by a licence to participate in the transmission of electricity to carry on the activities which the licence authorises (or any of them), at any time when a direction under section 34(4) above is in force, either in a specified manner or with a view to achieving specified objectives.]
- (3) In subsections (1) and (2) above “specified” means specified by or under the Secretary of State’s direction; [<sup>F298</sup>and a person subject to a direction under subsection (2) above shall give effect to it notwithstanding any other duty imposed on him by or under this Part.]
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under section 34 above or this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (5) A person who, without reasonable excuse, contravenes or fails to comply with a direction of the Secretary of State under section 34 above or this section shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the <sup>M6</sup>Energy Act 1976 (administration of Act and other matters) shall have effect as if—
- (a) section 34 above were contained in that Act;
  - (b) the powers of paragraph 1 were exercisable for any purpose connected with securing compliance with a direction under that section;
  - (c) information obtained by virtue of that paragraph could lawfully be disclosed to any person by whom anything falls to be specified under such a direction; and
  - (d) the powers conferred by sub-paragraph (1)(c) of that paragraph included power to direct that information and forecasts be furnished to any such person.

#### Textual Amendments

**F296** Words in s. 35(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 12(2)**; S.I. 2004/2184, **art. 2(2)**, **Sch. 2**

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**F297** S. 35(2) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 12\(3\)](#); S.I. 2004/2184, art. 2(2), Sch. 2

**F298** Words in s. 35(3) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 12\(4\)](#); S.I. 2004/2184, art. 2(2), Sch. 2

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

**C59** S. 35: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with art. 7)

**Marginal Citations**

**M6** 1976 c. 76.

**36 Consent required for construction etc. of generating stations.**

(1) Subject to subsections <sup>F299</sup>(1A) to] (2) and (4) below, a generating station shall not be constructed <sup>F300</sup>at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be], extended or operated except in accordance with a consent granted by the <sup>F301</sup>appropriate authority].

<sup>F302</sup>(1A) So far as relating to the construction or extension of a generating station, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).

(1B) So far as relating to the operation of a generating station, subsection (1) does not apply if the operation is authorised by an order granting development consent under the Planning Act 2008.]

<sup>F303</sup>(1C) This section is subject to section 12 of the Marine and Coastal Access Act 2009 (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

<sup>F304</sup>(1D) Subsection (1) does not apply to an English or Welsh onshore wind generating station.

(1E) “English or Welsh onshore wind generating station” means a generating station that—  
(a) generates electricity from wind, and  
(b) is situated in England or Wales, but not in waters in or adjacent to England or Wales up to the seaward limits of the territorial sea.]

(2) Subsection (1) above shall not apply to a generating station whose capacity—

(a) <sup>F305</sup>in the case of a generating station otherwise than in Wales,] does not exceed the permitted capacity, that is to say, 50 megawatts; <sup>F306</sup>...

(b) in the case of a generating station which is to be constructed or extended, will not exceed the permitted capacity when it is constructed or extended <sup>F307</sup>otherwise than in Wales];

<sup>F308</sup>(c) in the case of a generating station <sup>F308</sup>in Wales, does not exceed the devolved capacity, that is to say, 350 megawatts; and

(d) in the case of a generating station which is to be constructed or extended in Wales, will not exceed the devolved capacity when it is constructed or extended;]

and an order under this subsection may make different provision for generating stations of different classes or descriptions.

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- (3) The Secretary of State may by order provide that subsection (2) above shall have effect as if for the permitted capacity mentioned in paragraph (a) there were substituted such other capacity as may be specified in the order.
- (4) The [<sup>F309</sup>appropriate authority] may by order direct that subsection (1) above shall not apply to generating stations of a particular class or description, either generally or for such purposes as may be specified in the order.
- (5) [<sup>F310</sup>Subject to subsections (5A) and (5B),] A consent under this section—
- (a) may include such conditions (including conditions as to the ownership or operation of the station) as appear to the [<sup>F311</sup>appropriate authority] to be appropriate; and
  - (b) shall continue in force for such period as may be specified in or determined by or under the consent.
- [<sup>F312</sup>(5A) In the case of a generating station in respect of which a controlled activity, within the meaning of the Water Environment (Controlled Activities) (Scotland) Regulations 2005, will be carried on, the Secretary of State shall, before granting a consent under subsection (1), obtain and have regard to the advice of the Scottish Environment Protection Agency on matters relating to the protection of the water environment and have regard to the purposes of Part 1 of the Water Environment and Water Services (Scotland) Act 2003.
- (5B) In the event that the conditions of a consent granted under subsection (1) on matters relating to the protection of the water environment, and the conditions of an authorisation granted under the Water Environment (Controlled Activities) (Scotland) Regulations 2005 differ, and cannot reasonably be reconciled, the relevant conditions of that consent shall be treated as modified to the extent necessary to be consistent with the conditions of that authorisation.]
- (6) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of
- [<sup>F313</sup>(a) the Welsh Ministers, if they are the appropriate authority, or
  - (b) the Secretary of State, in all other cases.]
- (8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.
- [<sup>F314</sup>(8A) The Welsh Ministers may by regulations make provision about the grant of consents under section 36 in relation to generating stations in respect of which they are the appropriate authority, including in particular provision about—
- (a) the making and withdrawal of applications;
  - (b) fees;
  - (c) publicity and consultation requirements;
  - (d) rights to make representations;
  - (e) public inquiries;
  - (f) consideration of applications.

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(8B) The Welsh Ministers may by regulations make provision for applications in respect of which they are the appropriate authority to be determined by a person appointed by them for that purpose.]

(9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land [<sup>F315</sup>or area of waters] (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

[<sup>F316</sup>(10) In this section “appropriate authority” means—

- (a) the Scottish Ministers, in relation to a generating station in or to be constructed in Scotland;
- (b) the Welsh Ministers, in relation to a generating station in or to be constructed in Welsh waters that—
  - (i) does not exceed the devolved capacity, that is to say, 350 megawatts;
  - (ii) in the case of a generating station which is to be constructed or extended, will not exceed the devolved capacity when constructed or extended;
- (c) the Secretary of State, in all other cases.

(11) In this section—

- “Scotland” has the same meaning as in section 32(2) (see section 32(3));
- “Welsh waters” means so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Wales, and the Welsh zone;
- “Welsh zone” has the meaning given in section 158 of the Government of Wales Act 2006.]

#### Textual Amendments

- F299** Words in s. 36(1) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 32(2)** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F300** Words in s. 36(1) inserted (1.3.2005) by [Energy Act 2004 \(c. 20\)](#), s. 93(1)(4), 198(2); [S.I. 2005/442](#), art. 2(1), Sch. 1
- F301** Words in s. 36(1) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), ss. 39(8), 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), regs. 3(h), 5(a)
- F302** S. 36(1A)(1B) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 32(3)** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F303** S. 36(1C) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 12(7)(a)(8), 324(3); [S.I. 2010/298](#), art. 2, Sch. para. 4 (with art. 4(1))
- F304** S. 36(1D)(1E) inserted (12.7.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 78, 84(3); [S.I. 2016/602](#), reg. 3(g) (with reg. 4) (as substituted by [S.I. 2016/710](#), reg. 2)
- F305** Words in s. 36(2)(a) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), ss. 39(9)(a)(i), 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), regs. 3(h), 5(a)
- F306** Word in s. 36(2)(a) omitted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by virtue of [Wales Act 2017 \(c. 4\)](#), ss. 39(9)(a)(ii), 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), regs. 3(h), 5(a)
- F307** Words in s. 36(2)(b) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), ss. 39(9)(b), 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), regs. 3(h), 5(a)

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- F308** S. 36(2)(c)(d) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(9)(c)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F309** Words in s. 36(4) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(8)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F310** Words in s. 36(5) inserted (S.) (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(a)**
- F311** Words in s. 36(5)(a) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(8)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F312** S. 36(5A)(5B) inserted (1.4.2006) by The Water Environment and Water Services (Scotland) Act 2003 (Consequential Provisions and Modifications) Order 2006 (S.I. 2006/1054), art. 1(1), **Sch. 1 para. 1(2)(b)**
- F313** Words in s. 36(7) substituted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(10)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F314** S. 36(8A)(8B) inserted (1.4.2019) by Wales Act 2017 (c. 4), s. 71(4), **Sch. 6 para. 47** (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, reg. 5(b)
- F315** Words in s. 36(9) inserted (1.3.2005) by Energy Act 2004 (c. 20), **s. 93(3)(4)**, 198(2); S.I. 2005/442, art. 2(1), Sch. 1
- F316** S. 36(10)(11) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(11)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)

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

- C60** S. 36 restricted by S.I. 1990/442, **art. 3(1)(a)**
- C61** S. 36 modified (S.) (27.5.1997) by 1997 c. 8, **ss. 57(2)**, 278(2) (with ss. 64, 219)  
S. 36 modified (S.) (27.5.1997) by 1997 c. 10, **ss. 10(2)**, 31, 40(2) (with ss. 9(3), 10(5), 38(6))
- C62** S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)
- C63** S. 36 restricted (21.11.2003) by The Norfolk Offshore Wind Farm Order 2003 (S.I. 2003/2830), arts. 1, **16** (with art. 23)
- C64** S. 36 excluded (16.4.2004) by The Gunfleet Sands Offshore Wind Farm Order 2004 (S.I. 2004/933), arts. 1, **16**
- C65** S. 36 excluded (19.11.2004) by The Scarweather Sands Offshore Wind Farm Order 2004 (S.I. 2004/3054), arts. 1, **26** (with art. 38)
- C66** S. 36 functions modified (12.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(2), **2** (with art. 6)
- C67** S. 36: transfer of functions (13.4.2006) by The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 2006 (S.I. 2006/1040), arts. 1(1), **3** (with art. 6)
- C68** S. 36(1): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))
- C69** S. 36(1) excluded (E.W.) (1.3.2016) by The Onshore Wind Generating Stations (Exemption) (England and Wales) Order 2016 (S.I. 2016/21), arts. 1(1), **3** (with art. 4)
- C70** S. 36(2) modified (S.) by S.I. 1990/392, **art. 2**
- C71** S. 36(2) modified (E.W.) (1.12.2001) by S.I. 2001/3642, **art. 2**
- C72** S. 36(2) modified (S.) (26.9.2002) by The Electricity Act 1989 (Requirement of Consent for Offshore Generating Stations) (Scotland) Order 2002 (S.S.I. 2002/407), **art. 3**
- C73** S. 36(5): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))
- C74** S. 36(7): transfer of functions (1.4.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 12**, 324(3); S.I. 2010/298, art. 2, Sch. para. 4 (with art. 4(1))

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### **[<sup>F317</sup>36A Declarations extinguishing etc. public rights of navigation**

- (1) Where a consent is granted by [<sup>F318</sup>the appropriate authority] in relation to—
- (a) the construction or operation of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters, or
  - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters or an extension of such an installation,

[<sup>F319</sup>the appropriate authority] may, at the same time, make a declaration under this section as respects rights of navigation so far as they pass through some or all of those places.

[ This section is subject to section 12 of the Marine and Coastal Access Act 2009  
<sup>F320</sup>(1A) (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

- (2) [<sup>F321</sup>The appropriate authority] may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.
- (3) A declaration under this section is one declaring that the rights of navigation specified or described in it—
- (a) are extinguished;
  - (b) are suspended for the period that is specified in the declaration;
  - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
- (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
  - (b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—
- (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
  - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
  - (c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and
  - (d) may make different provision in relation to different means of exercising a right of navigation.
- (6) Where a declaration is made under this section by [<sup>F322</sup>the appropriate authority], or a determination is made by [<sup>F323</sup>the appropriate authority] for the purposes of a provision contained in such a declaration, he or (as the case may be) they must either—
- (a) publish the declaration or determination in such manner as appears to [<sup>F323</sup>the appropriate authority] to be appropriate for bringing it, as soon as is reasonably practicable, to the attention of persons likely to be affected by it; or
  - (b) secure that it is published in that manner by the applicant for the declaration.

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(7) In this section—

[<sup>F324</sup>“appropriate authority” has the same meaning as in section 36;]

“consent” means a consent under section 36 above;

“extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;

“relevant waters” means waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea.

#### Textual Amendments

**F317** Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 99(1)**, 198(2); [S.I. 2005/442](#), art. 2(1)(3), [Sch. 1](#), [Sch. 3](#); [S.I. 2005/877](#), art. 2(2), [Sch. 2](#)

**F318** Words in s. 36A(1) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(2)(a)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

**F319** Words in s. 36A(1) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(2)(b)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

**F320** S. 36A(1A) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **s. 12(7)(b)(8)**, 324(3); [S.I. 2010/298](#), art. 2, [Sch. para. 4](#) (with art. 4(1))

**F321** Words in s. 36A(2) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(3)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

**F322** Words in s. 36A(6) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(4)(a)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

**F323** Words in s. 36A(6) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(4)(b)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

**F324** Words in s. 36A(7) inserted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 40(5)**, 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), reg. 5(a)

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

**C75** S. 36A: transfer of functions (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 12**, 324(3); [S.I. 2010/298](#), art. 2, [Sch. para. 4](#) (with art. 4(1))

**C76** Ss. 36A(4)-(6) applied (1.9.2005) by [Energy Act 2004 \(c. 20\)](#), **ss. 100(5)**, 198(2); [S.I. 2005/442](#), art. 2(3), [Sch. 3](#)

### 36B Duties in relation to navigation

- (1) [<sup>F325</sup>The appropriate authority may not] grant a consent in relation to any particular offshore generating activities if [<sup>F326</sup>the appropriate authority considers] that interference with the use of recognised sea lanes essential to international navigation—
- (a) is likely to be caused by the carrying on of those activities; or
  - (b) is likely to result from their having been carried on.

[ This section is subject to section 12 of the Marine and Coastal Access Act 2009  
<sup>F327</sup>(1A) (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

- (2) It shall be the duty [<sup>F328</sup>of the appropriate authority], in determining—
- (a) whether to give a consent for any particular offshore generating activities, and
  - (b) what conditions to include in such a consent,

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- to have regard to the extent and nature of any obstruction of or danger to navigation which (without amounting to interference with the use of such sea lanes) is likely to be caused by the carrying on of the activities, or is likely to result from their having been carried on.
- (3) In determining for the purposes of this section what interference, obstruction or danger is likely and its extent and nature, [<sup>F329</sup>the appropriate authority] must have regard to the likely overall effect (both while being carried on and subsequently) of—
- (a) the activities in question; and
  - (b) such other offshore generating activities as are either already the subject of consents or are activities in respect of which it appears likely that consents will be granted.
- (4) For the purposes of this section the effects of offshore generating activities include—
- (a) how, in relation to those activities, [<sup>F330</sup>the appropriate authority has exercised or will exercise its powers] under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and
  - (b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).
- (5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—
- (a) the provision of aids to navigation (including, in particular, lights and signals);
  - (b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
  - (c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.
- (6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.
- (7) In this section—
- “consent” means a consent under section 36 above;
  - “offshore generating activities” means—
    - (a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or
    - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;
  - “the use of recognised sea lanes essential to international navigation” means—
    - (a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or
    - (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.
- (8) In subsection (7) “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.]

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### Textual Amendments

- F317** Ss. 36A, 36B inserted (1.3.2005 for specified purposes, 1.9.2005 for specified purposes, 1.10.2005 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), [ss. 99\(1\)](#), 198(2); [S.I. 2005/442](#), [art. 2\(1\)\(3\)](#), [Sch. 1](#), [Sch. 3](#); [S.I. 2005/877](#), [art. 2\(2\)](#), [Sch. 2](#)
- F325** Words in s. 36B(1) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), [ss. 40\(7\)\(a\)](#), 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), [reg. 5\(a\)](#)
- F326** Words in s. 36B(1) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), [ss. 40\(7\)\(b\)](#), 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), [reg. 5\(a\)](#)
- F327** S. 36B(1A) inserted (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [s. 12\(7\)\(b\)\(8\)](#), 324(3); [S.I. 2010/298](#), [art. 2](#), [Sch. para. 4](#) (with [art. 4\(1\)](#))
- F328** Words in s. 36B(2) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), [ss. 40\(8\)](#), 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), [reg. 5\(a\)](#)
- F329** Words in s. 36B(3) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), [ss. 40\(9\)](#), 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), [reg. 5\(a\)](#)
- F330** Words in s. 36B(4)(a) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), [ss. 40\(10\)](#), 71(4) (with [Sch. 7 paras. 1, 6, 8](#)); [S.I. 2017/1179](#), [reg. 5\(a\)](#)

### Modifications etc. (not altering text)

- C77** S. 36B: transfer of functions (1.4.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), [ss. 12](#), 324(3); [S.I. 2010/298](#), [art. 2](#), [Sch. para. 4](#) (with [art. 4\(1\)](#))

## [<sup>F331</sup>36C Variation of consents under section 36

- (1) The person for the time being entitled to the benefit of a section 36 consent may make an application to the appropriate authority for the consent to be varied.
- (2) Regulations may make provision about the variation of a section 36 consent, including in particular provision about—
  - (a) the making and withdrawal of applications;
  - (b) fees;
  - (c) publicity and consultation requirements;
  - (d) rights to make representations;
  - (e) public inquiries;
  - (f) consideration of applications.
- (3) Regulations under subsection (2) may provide for any statutory provision applicable to the grant of a section 36 consent to apply with specified modifications to the variation of a section 36 consent.
- (4) On an application for a section 36 consent to be varied, the appropriate authority may make such variations to the consent as appear to the authority to be appropriate, having regard (in particular) to—
  - (a) the applicant's reasons for seeking the variation;
  - (b) the variations proposed;
  - (c) any objections made to the proposed variations, the views of consultees and the outcome of any public inquiry.
- (5) Regulations may make provision treating, for prescribed purposes, a section 36 consent varied under this section as granted in its varied form when the original consent was granted (rather than when the variation was made).

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[ Regulations may provide that, where the Welsh Ministers are the appropriate authority,  
<sup>F332</sup>(5A) applications under this section are to be determined by a person appointed by the Welsh  
Ministers for that purpose.]

(6) In this section—

“the appropriate authority” means—

- (a) the Scottish Ministers, in a case where the section 36 consent relates to a generating station (or proposed generating station) in Scotland;
- (ab) [<sup>F333</sup>the Welsh Ministers, in a case where the section 36 consent relates to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts;]
- (b) the Marine Management Organisation, in a case where the section 36 consent was granted by it [<sup>F334</sup>and does not relate to a generating station (or proposed generating station) in Welsh waters that does not or will not when constructed or extended exceed 350 megawatts];
- (c) the Secretary of State, in any other case;

“regulations” means regulations made by—

- (a) the Scottish Ministers, in the case of section 36 consents relating to generating stations (or proposed generating stations) in Scotland;
- (aa) [<sup>F335</sup>the Welsh Ministers, in the case of section 36 consents relating to generating stations (or proposed generating stations) in Welsh waters that do not or will not when constructed or extended exceed 350 megawatts;]
- (b) the Secretary of State, in any other case;

“Scotland” has the same meaning as in section 32(2) (see section 32(3));

“section 36 consent” means a consent granted under section 36 (construction, extension or operation of generating station), whenever granted;

“statutory provision” means a provision of or made under an Act, whenever passed or made; and for this purpose “Act” includes an Act of the Scottish Parliament [<sup>F336</sup>and an Act of the Assembly].

[<sup>F337</sup>“Welsh waters” has the meaning given in section 36.]

### Textual Amendments

- F331** S. 36C inserted (19.6.2013 for specified purposes, 31.7.2013 in relation to E.W. so far as it is not already in force, 1.12.2013 in relation to S. so far as it is not already in force) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), **ss. 20(2), 35(1)**; S.I. 2013/1488, arts. 2, 5(a), 7
- F332** S. 36C(5A) inserted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), s. 71(4), **Sch. 6 para. 48** (with Sch. 7 paras. 1, 6); S.I. 2017/1179, reg. 5(b)
- F333** Words in s. 36C(6) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), **ss. 39(12)(a)(i)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F334** Words in s. 36C(6) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), **ss. 39(12)(a)(ii)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)
- F335** Words in s. 36C(6) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [Wales Act 2017 \(c. 4\)](#), **ss. 39(12)(b)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)

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**F336** Words in s. 36C(6) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(12)(c)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)

**F337** Words in s. 36C(6) inserted (1.4.2018 for specified purposes, 1.4.2019 in so far as not already in force) by Wales Act 2017 (c. 4), **ss. 39(12)(d)**, 71(4) (with Sch. 7 paras. 1, 6, 8); S.I. 2017/1179, regs. 3(h), 5(a)

### <sup>F338</sup>36D Proceedings for questioning certain decisions under section 36

- (1) If a person is aggrieved by a decision of the Scottish Ministers to which this section applies, and wishes to question the validity of the decision on either of the grounds mentioned in subsection (2), the person (the “aggrieved person”) may make an application to the Inner House of the Court of Session under this section.
- (2) The grounds are that—
  - (a) the decision is not within the powers of the Scottish Ministers under this Part,
  - (b) one or more of the relevant requirements have not been complied with in relation to the decision.
- (3) This section applies to a decision under section 36 in relation to an application for consent to construct, extend or operate a generating station that comprises or is to comprise (in whole or in part) renewable energy installations situated at places in relevant waters.
- (4) An application under this section must be made within the period of 6 weeks beginning with the date on which the decision to which the application relates is taken.
- (5) On an application under this section, the Inner House of the Court of Session—
  - (a) may suspend the decision until the final determination of the proceedings,
  - (b) may quash the decision either in whole or in part if satisfied that—
    - (i) the decision in question is not within the powers of the Scottish Ministers under this Part, or
    - (ii) the interests of the aggrieved person have been substantially prejudiced by failure to comply with any of the relevant requirements in relation to the decision.
- (6) In this section—
 

“relevant waters” has the same meaning as in section 36A(7);

“the relevant requirements”, in relation to a decision to which this section applies, means the requirements of this Act, or of any order or regulations made under this Part, which are applicable to that decision.

#### Textual Amendments

**F338** Ss. 36D, 36E inserted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015](#) (S.I. 2015/374), arts. 1(1), **4(2)** (with art. 4(4))

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### **36E Applications under section 36D: requirement for permission**

- (1) No proceedings may be taken in respect of an application under section 36D(1) unless the Inner House of the Court of Session has granted permission for the application to proceed.
- (2) The Court may grant permission under subsection (1) for an application to proceed only if it is satisfied that—
  - (a) the applicant can demonstrate a sufficient interest in the subject matter of the application, and
  - (b) the application has a real prospect of success.
- (3) The Court may grant permission under subsection (1) for an application to proceed—
  - (a) subject to such conditions as the Court thinks fit, or
  - (b) only on such of the grounds specified in the application as the Court thinks fit.]

#### **Textual Amendments**

**F338** Ss. 36D, 36E inserted (26.2.2015) by [The Regulatory Reform \(Scotland\) Act 2014 \(Consequential Modifications\) Order 2015 \(S.I. 2015/374\)](#), arts. 1(1), **4(2)** (with art. 4(4))

### **37 Consent required for overhead lines.**

- (1) Subject to <sup>F339</sup>subsections (1A) to <sup>F340</sup>(2A)] below, an electric line shall not be installed or kept installed above ground except in accordance with a consent granted by the Secretary of State.
- <sup>F341</sup>(1A) So far as relating to the installation of an electric line, subsection (1) is subject to section 33(1) of the Planning Act 2008 (exclusion of requirement for other consents for development for which development consent required).
- (1B) So far as relating to keeping an electric line installed, subsection (1) does not apply if keeping the line installed is authorised by an order granting development consent under the Planning Act 2008.]
- (2) Subsection (1) above shall not apply—
  - (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
  - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
  - (c) in such other cases as may be prescribed.
- <sup>F342</sup>(2A) Subsection (1) above shall not apply in relation to an electric line that—
  - (a) has a nominal voltage of 132 kilovolts or less, and
  - (b) is associated with the construction or extension of a devolved Welsh generating station granted planning permission or consented to on or after the day on which section 39 of the Wales Act 2017 comes into force.
- (2B) “Devolved Welsh generating station” means a generating station that—
  - (a) is in Wales and—
    - (i) generates electricity from wind, or
    - (ii) has a maximum capacity of 350 megawatts or less; or

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- (b) is in Welsh waters and has a maximum capacity of 350 megawatts or less.
- (2C) “Welsh waters” has the meaning given in section 36 above.]
- (3) A consent under this section—
- (a) may include such conditions (including conditions as to the ownership and operation of the line) as appear to the Secretary of State to be appropriate;
  - (b) may be varied or revoked by the Secretary of State at any time after the end of such period as may be specified in the consent; and
  - (c) subject to paragraph (b) above, shall continue in force for such period as may be specified in or determined by or under the consent.
- (4) Any person who without reasonable excuse contravenes the provisions of this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (5) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

#### Textual Amendments

- F339** Words in s. 37(1) substituted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 33(2)** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F340** Word in s. 37(1) substituted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 42(2)**, 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), reg. 5(a)
- F341** S. 37(1A)(1B) inserted (1.3.2010) by [Planning Act 2008 \(c. 29\)](#), s. 241(8), **Sch. 2 para. 33(3)** (with s. 226); [S.I. 2010/101](#), art. 2 (with art. 6)
- F342** S. 37(2A)-(2C) inserted (1.4.2019) by [Wales Act 2017 \(c. 4\)](#), **ss. 42(3)**, 71(4) (with Sch. 7 paras. 1, 6, 8); [S.I. 2017/1179](#), reg. 5(a)

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

- C78** S. 37 restricted by [S.I. 1990/442](#), **art. 3(1)(b)**
- C79** S. 37 excluded (16.3.1992) by [Midland Metro Act 1992 \(c. vii\)](#), **s. 10(3)**
- C80** S. 37 modified (S.) (27.5.1997) by [1997 c. 8](#), **ss. 57(2)**, 278(2) (with ss. 64, 219)
- C81** S. 37: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), art. 2, **Sch. 1** (with art. 7)
- C82** S. 37 excluded (19.11.2004) by [The Scarweather Sands Offshore Wind Farm Order 2004 \(S.I. 2004/3054\)](#), arts. 1, **26** (with art. 38)
- C83** S. 37(1) excluded (1.1.1993) by [S.I. 1992/3074](#), **reg.3**
- C84** S. 37(1) excluded (18.12.1996) by [1996 c. 61](#), **s. 50(1)**
- C85** S. 37(1) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 4(1)**
- C86** S. 37(1) excluded (E.W.) (6.4.2009) by [The Overhead Lines \(Exemption\) \(England and Wales\) Regulations 2009 \(S.I. 2009/640\)](#), regs. 1(3), **3-5**
- C87** S. 37(1) excluded (S.) (1.11.2013) by [The Overhead Lines \(Exemption\) \(Scotland\) Regulations 2013 \(S.S.I. 2013/264\)](#), regs. 1, **3(1)** (with regs. 3(3), 4, 5, 6(2))
- C88** S. 37(1) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), **ss. 31(1)**, 70(1)

## 38 Preservation of amenity and fisheries.

The provisions of Schedule 9 to this Act (which relate to the preservation of amenity and fisheries) shall have effect.

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*Consumer protection: standards of performance*

**39 Electricity supply: performance in individual cases.**

[<sup>F343</sup>(1) The Authority may, with the consent of the Secretary of State, make regulations prescribing such standards of performance in connection with the activities of electricity suppliers, so far as affecting customers or potential customers of theirs, as in the Authority’s opinion ought to be achieved in individual cases.]

(2) Regulations under this section may—

(a) prescribe circumstances in which [<sup>F344</sup>electricity suppliers] are to inform persons of their rights under this section [<sup>F345</sup>or their rights under section 39A];

(b) prescribe such standards of Performance in relation to any duty arising under paragraph (a) above as, in the Director’s opinion, ought to be achieved in all cases; and

(c) prescribe circumstances in which [<sup>F344</sup>electricity suppliers] are to be exempted from any requirements of the regulations or this section,

[<sup>F346</sup>and, if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers, may make different provision for different electricity suppliers.]

(3) If [<sup>F347</sup>an electricity supplier] fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.

(4) The making of compensation under this section in respect of any failure by [<sup>F347</sup>an electricity supplier] to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.

<sup>F348</sup>(5) .....

<sup>F348</sup>(5A) .....

<sup>F348</sup>(6) .....

(7) In this section “prescribed” means prescribed by regulations under this section.

**Textual Amendments**

**F343** S. 39(1) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(a)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F344** Words in s. 39(2)(a)(c) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(c)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F345** Words in s. 39(2)(a) inserted (1.10.2001) by 2000 c. 27, s. 54(1)(a); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F346** Words in s. 39(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(b)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

**F347** Words in s. 39(3)(4) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 para. 32(d)**; S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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**F348** S. 39(5)(5A)(6) repealed (1.10.2001) by 2000 c. 27, ss. 54(1)(b), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[<sup>F349</sup>**39A Standards of performance in individual cases: electricity distributors.**

- (1) The Authority may with the consent of the Secretary of State make regulations prescribing such standards of performance in connection with the activities of electricity distributors, so far as affecting customers or potential customers of electricity suppliers, as in the Authority's opinion ought to be achieved in individual cases.
- (2) If an electricity distributor fails to meet a prescribed standard, he shall make to any person who is affected by the failure and is of a prescribed description such compensation as may be determined by or under the regulations.
- (3) The regulations may—
  - (a) prescribe circumstances in which electricity distributors are to inform customers or potential customers of electricity suppliers of their rights under this section;
  - (b) prescribe such standards of performance in relation to any duty arising under paragraph (a) as, in the Authority's opinion, ought to be achieved in all cases;
  - (c) make provision as to the manner in which compensation under this section is to be made;
  - (d) prescribe circumstances in which electricity distributors are to be exempted from any requirements of the regulations or this section; and
  - (e) if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors, make different provision with respect to different electricity distributors.
- (4) Provision made under subsection (3)(c) may—
  - (a) require or permit compensation to be made on behalf of electricity distributors by electricity suppliers to customers or potential customers; and
  - (b) require electricity suppliers to provide services to electricity distributors in connection with the making of compensation under this section.
- (5) The making of compensation under this section in respect of any failure to meet a prescribed standard shall not prejudice any other remedy which may be available in respect of the act or omission which constituted that failure.
- (6) In this section “prescribed” means prescribed by regulations under this section.]

**Textual Amendments**

**F349** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

[<sup>F350</sup>**39B Standards of performance in individual cases: disputes.**

- (1) Any dispute arising under section 39 or 39A or regulations made under either of those sections—

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- (a) may be referred to [<sup>F351</sup>Authority—
    - (i) by either party, or
    - (ii) with the consent of either party, by Citizens Advice or Citizens Advice Scotland or Citizens Advice and Citizens Advice Scotland acting jointly;] and
  - (b) on such a reference, shall be determined by order made by the Authority or, if it thinks fit, by such person (other than [<sup>F352</sup>Citizens Advice or Citizens Advice Scotland] ) as may be prescribed.
- (2) A person making an order under subsection (1) shall include in the order his reasons for reaching his decision with respect to the dispute.
- (3) The practice and procedure to be followed in connection with any such determination shall be such as may be prescribed.
- (4) An order under subsection (1) shall be final and shall be enforceable—
  - (a) in England and Wales, as if it were a judgment of [<sup>F353</sup>the county court]; and
  - (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- (5) In this section “prescribed” means prescribed by regulations made by the Authority with the consent of the Secretary of State.]

#### Textual Amendments

- F350** Ss. 39A, 39B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 54(2); S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)
- F351** Words in s. 39B(1)(a) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(10)(a)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F352** Words in s. 39B(1)(b) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(10)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F353** Words in s. 39B(4)(a) substituted (22.4.2014) by [Crime and Courts Act 2013 \(c. 22\)](#), s. 61(3), **Sch. 9 para. 52**; S.I. 2014/954, art. 2(c) (with art. 3) (with transitional provisions and savings in S.I. 2014/956, arts. 3-11)

#### 40 Electricity supply: overall performance.

- (1) The Director may, <sup>F354</sup> . . . from time to time—
  - (a) determine such standards of overall performance in connection with the provision of electricity supply services as, in his opinion, ought to be achieved by [<sup>F355</sup>electricity] suppliers; and
  - (b) arrange for the publication, in such form and in such manner as he considers appropriate, of the standards so determined.

<sup>F356</sup>(1A) . . . . .

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- (2) Different standards may be determined under this section for different [<sup>F357</sup>electricity suppliers][<sup>F358</sup>if the Authority is of the opinion that the differences are such that no electricity supplier would be unduly disadvantaged in competing with other electricity suppliers].
- <sup>F359</sup>[(3) It shall be the duty of every [<sup>F360</sup>electricity supplier] to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.]

#### Textual Amendments

- F354** Words in s. 40(1) repealed (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), ss. 20(2), 56(7), [Sch. 2](#); Commencement Order No. 1 made on 29.5.1992, art. 3, [Sch. Pt. I](#).
- F355** Words in s. 40(1)(a) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(a\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F356** S. 40(1A) repealed (1.10.2001) by 2000 c. 27, s. 108, [Sch. 8](#); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F357** Words in s. 40(2) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(c\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F358** Words in s. 40(2) inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(b\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)
- F359** S. 40(3) added (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 24; Commencement Order No. 1 made on 29.5.1992, art. 3, [Sch. Pt. I](#)
- F360** Words in s. 40(3) substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 108, [Sch. 6 Pt. II para. 33\(d\)](#); S.I. 2001/1781, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, [Sch.](#) (subject to transitional provisions in arts. 3-20)

#### [<sup>F361</sup>40A Overall standards of performance: electricity distributors.

- (1) The Authority may from time to time—
- (a) determine such standards of overall performance in connection with the activities of electricity distributors as, in its opinion, ought to be achieved by them; and
  - (b) arrange for the publication, in such form and in such manner as it considers appropriate, of the standards so determined.
- (2) Different standards may be determined for different electricity distributors if the Authority is of the opinion that the differences are such that no electricity distributor would be unduly disadvantaged in competing with other electricity distributors.
- (3) It shall be the duty of every electricity distributor to conduct his business in such a way as can reasonably be expected to lead to his achieving the standards set under this section.]

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#### Textual Amendments

**F361** S. 40A inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 55; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

#### [<sup>F362</sup>40B Procedures for prescribing or determining standards of performance.

- (1) Before prescribing standards of performance in regulations under section 39 or 39A, or determining standards of performance under section 40 or 40A, the Authority shall—
  - (a) arrange for such research as the Authority considers appropriate with a view to discovering the views of a representative sample of persons likely to be affected and consider the results;
  - (b) publish a notice of its proposals in accordance with subsections (2) and (3) and consider any representations which are duly made in respect of those proposals; and
  - (c) consult [<sup>F363</sup>Citizens Advice and Citizens Advice Scotland] and other persons or bodies mentioned in subsection (4).
- (2) The notice required by subsection (1)(b) is a notice—
  - (a) stating that the Authority proposes to prescribe or determine standards of performance and setting out the standards of performance proposed;
  - (b) stating the reasons why it proposes to prescribe or determine those standards of performance; and
  - (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made.
- (3) A notice required by subsection (1)(b) shall be published in such manner as the Authority considers appropriate for the purpose of bringing it to the attention of those likely to be affected by the proposals.
- (4) The persons or bodies to be consulted by the Authority under subsection (1)(c) are—
  - (a) electricity suppliers (in the case of standards of performance under section 39 or 40) or electricity distributors and electricity suppliers (in the case of standards of performance under section 39A or 40A); and
  - (b) persons or bodies appearing to the Authority to be representative of persons likely to be affected by the regulations or determination.
- (5) The Authority shall make arrangements for securing that notices under subsection (1)(b), regulations under section 39 or 39A and determinations under section 40 or 40A are made available to the public by whatever means it considers appropriate.]

#### Textual Amendments

**F362** S. 40B inserted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 56; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F363** Words in s. 40B(1)(c) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents](#)

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etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(11)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**[<sup>F366</sup>41A [<sup>F364</sup>Promotion of reductions in carbon emissions: <sup>F365</sup>... electricity distributors and electricity suppliers]**

(1) The Secretary of State may by order impose—

<sup>F367</sup>(za) .....

- (a) on each electricity distributor (or each electricity distributor of a specified description); and
- (b) on each electricity supplier (or each electricity supplier of a specified description),

an obligation to achieve, within a specified period and in accordance with the order, the [<sup>F368</sup>carbon emissions reduction target] to be determined by [<sup>F369</sup>the Administrator] under the order for that <sup>F370</sup>... distributor or supplier (and that obligation is referred to in this section as [<sup>F371</sup>a “carbon emissions reduction obligation”]).

[<sup>F372</sup>(1A) The power to make orders under this section may be exercised so as to impose more than one carbon emissions reduction obligation on a person in relation to the same period or to periods that overlap to any extent.]

[<sup>F373</sup>(2) In this section “carbon emissions reduction target” means a target for the promotion of any of the following—

- (a) measures for improving energy efficiency, that is to say, efficiency in the use by consumers of electricity, gas conveyed through pipes or any other source of energy which is specified in the order;
- (b) if the order so provides—
  - (i) measures for increasing the amount of electricity generated, or heat produced, by microgeneration;
  - (ii) any other measures of a description specified in the order for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies;
  - (iii) measures for reducing the consumption of such energy as is mentioned in paragraph (a).]

[ In this section “the Administrator” means—

<sup>F374</sup>(2A) (a) the Authority; or  
(b) if the order so provides, the Secretary of State or a specified body other than the Authority.]

(3) An order under this section may specify criteria by reference to which [<sup>F375</sup>the Administrator] is to determine [<sup>F376</sup>carbon emissions reduction targets] for the <sup>F377</sup>... electricity distributors or electricity suppliers on whom obligations are imposed by the order.

(4) The Secretary of State and [<sup>F378</sup>(subject to any directions given under subsection (9B)) the Administrator] shall carry out their respective functions under this section in the manner he or it considers is best calculated to ensure that [<sup>F379</sup>—

<sup>F380</sup>(a) .....

- (b) no electricity distributor is unduly disadvantaged in competing with other electricity distributors, and

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- (c) no electricity supplier is unduly disadvantaged in competing with other electricity suppliers.]
- (5) The order may make provision generally in relation to the [<sup>F381</sup>carbon emissions reduction obligations] which it imposes, including in particular provision—
  - (a) as to the treatment of persons who become <sup>F382</sup>... electricity distributors or electricity suppliers after the beginning of the period to which the order relates;
  - (b) as to the action which qualifies for the purpose of meeting the whole or any part of [<sup>F383</sup>a carbon emissions reduction target];
  - [<sup>F384</sup>(ba) requiring part of a carbon emissions reduction target to be met by action of a specified description;
  - (bb) requiring the whole or any part of a carbon emissions reduction target to be met by action relating to—
    - (i) individuals of a specified description,
    - (ii) property of a specified description,
    - (iii) specified areas or areas of a specified description, or
    - (iv) individuals or property of a specified description in specified areas or areas of a specified description;
  - (bc) enabling the Administrator to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction;
  - (bd) preventing action from qualifying for the purpose of meeting the whole or any part of a carbon emissions reduction target unless such persons as are specified in, or determined in accordance with, the order—
    - (i) have been consulted about the action;
    - (ii) have consented to the action;
  - (be) requiring action which qualifies for the purpose of meeting both a carbon emissions reduction target and a home-heating cost reduction target to be treated as qualifying only for the purpose of meeting such one of those targets as the distributor or supplier concerned elects;
  - (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;]
  - (d) requiring <sup>F385</sup>... distributors and suppliers to give to [<sup>F386</sup>the Administrator] specified information, or information of a specified nature, about their proposals for complying with their [<sup>F387</sup>carbon emissions reduction obligations];
  - (e) requiring [<sup>F388</sup>the Administrator] to determine—
    - (i) whether any proposed action qualifies for the purpose of achieving the whole or any part of a person's [<sup>F389</sup>carbon emissions reduction target]; and
    - [<sup>F390</sup>(ii) if so, what contribution the proposed action (or any result of that action specified in the determination) is to make towards achieving the carbon emissions reduction target;]
  - (f) requiring <sup>F391</sup>... distributors or suppliers to produce to [<sup>F392</sup>the Administrator] evidence of a specified kind demonstrating that they have complied with their [<sup>F393</sup>carbon emissions reduction obligations][<sup>F394</sup>; and
  - (g) requiring the Administrator or a specified body to offer services of a specified kind and authorising a specified fee to be charged to those who take up the offer.]

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- [ If the order makes provision by virtue of subsection (5)(bc) enabling the Administrator<sup>F395</sup>(5A) to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction the order may also make provision—
- (a) authorising the Administrator to require specified persons to provide it with information for the purpose of enabling it to identify and select individuals who are to be the subject of a direction;
  - (b) specifying criteria in accordance with which the Administrator is to select individuals who are to be the subject of a direction;
  - (c) determining, or specifying the method for determining, which distributor or supplier is to be given a direction in relation to any particular individual selected in accordance with provision made under paragraph (b);
  - (d) authorising the Administrator, if it gives a direction to a distributor or supplier, to provide the distributor or supplier with information relating to the individual concerned for the purpose of assisting the distributor or supplier to comply with the direction;
  - (e) as to the times at which a direction may be given;
  - (f) as to the circumstances in which a direction need not be complied with.
- (5B) Provision made by virtue of subsection (5)(c) may in particular provide for an action to be treated as making a greater contribution than it would otherwise do if the action relates to—
- (a) an individual of a specified description,
  - (b) a property of a specified description, or
  - (c) both an individual of a specified description and a property of a specified description.]
- (6) The order may make provision authorising the [<sup>F396</sup>the Administrator] to require a<sup>F397</sup> ... distributor or supplier to provide it with specified information, or information of a specified nature, relating to—
- (a) his proposals for complying with his [<sup>F398</sup>carbon emissions reduction obligation]; or
  - (b) the question whether he has complied with that obligation.
- (7) The order may make provision as to circumstances in which—
- (a) a person's [<sup>F399</sup>carbon emissions reduction target] may be altered during the period to which the order relates;
  - (b) the whole or any part of a person's [<sup>F399</sup>carbon emissions reduction target] may be treated as having been achieved by action taken otherwise than by or on behalf of that person;
  - (c) any action taken before the period to which the order relates may be treated as qualifying action taken during that period;
  - (d) the whole or any part of a person's [<sup>F400</sup>carbon emissions reduction target] may be transferred to another<sup>F401</sup> ... electricity distributor or electricity supplier or to a gas transporter or gas supplier (within the meaning of Part I of the<sup>M7</sup>Gas Act 1986); or
  - (e) a person may carry forward the whole or any part of his [<sup>F400</sup>carbon emissions reduction target] for the period to which the order relates to a subsequent period.

[ The order may—

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- <sup>F402</sup>(7A) (a) make provision for any specified requirement contained in it to be treated as a relevant requirement for the purposes of this Part; or
- (b) if it provides for the Administrator to be a person other than the Authority, make provision for and in connection with enabling the Administrator to enforce any requirement imposed by the order.
- (7B) Provision made by virtue of paragraph (b) of subsection (7A) may, in particular, include provision corresponding to or applying (with or without modifications) any of sections 25 to 28.]
- (8) The order may—
- (a) provide for exceptions from any requirement of the order;
- <sup>F403</sup>(b) . . . . .
- (c) make supplementary, incidental and transitional provision; and
- (d) subject to subsection (4), make different provision for different cases (including different provision in relation to different <sup>F404</sup>... distributors or suppliers).
- (9) The order may include provision for treating the promotion of the supply to premises of—
- (a) electricity generated by a generating station which is operated for the purposes of producing heat, or a cooling effect, in association with electricity;
- (b) heat produced in association with electricity or steam produced from (or air or water heated by) such heat;
- (c) any gas or liquid subjected to a cooling effect produced in association with electricity,
- as promotion of energy efficiency.
- [ The order may make provision requiring the Administrator to give guidance to
- <sup>F405</sup>(9A) distributors or suppliers concerning such matters relating to the order as are specified.
- (9B) The Administrator shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.]
- (10) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- <sup>F406</sup>(10A) The Secretary of State must obtain the consent of the Scottish Ministers before making an order under this section which contains provision that—
- (a) is included by virtue of subsection (2)(b),
- (b) extends to Scotland, and
- (c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.]
- (11) Before making an order under this section the Secretary of State shall consult the Authority, [<sup>F407</sup>Citizens Advice, Citizens Advice Scotland], <sup>F408</sup>... electricity distributors and electricity suppliers and such other persons as he considers appropriate.
- (12) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

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[ Subsection (12) does not apply to an order under this section made only for the purpose  
F409(12A) of amending an earlier order under this section so as to alter the provision included  
in the earlier order by virtue of any of paragraphs (b), (ba) or (c) of subsection (5).  
But such an order shall be subject to annulment in pursuance of a resolution of either  
House of Parliament.

(12B) If an order under this section provides for the Administrator to be a body other than  
the Authority, the Secretary of State may make payments to the body of such amounts  
as the Secretary of State considers appropriate.]

[ In this section—  
F410(13) [F411“home-heating cost reduction target” has the meaning given by  
section 41B(2)(a);]  
“microgeneration” has the same meaning as in the Climate Change and  
Sustainable Energy Act 2006;  
“plant” includes any equipment, apparatus or appliance.  
[F412“specified” means specified in the order.]

(14) For the purposes of subsection (2)(b)(ii), electricity is generated, or heat is produced,  
using low-emissions sources or technologies if it is generated, or produced, by plant  
which relies wholly or mainly on a source of energy or a technology mentioned in  
section 26(2) of the Climate Change and Sustainable Energy Act 2006.]]

#### Textual Amendments

- F364** S. 41A heading substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(2)**; S.I. 2007/538, art. 2
- F365** Words in s. 41A heading omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(2)**
- F366** S. 41A inserted (1.10.2001) by 2000 c. 27, ss. 70, 198(2); S.I. 2001/3266, art. 2, **Sch.** (with arts. 3-20)
- F367** S. 41A(1)(za) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(3)(a)**
- F368** Words in s. 41A(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(2)(a)**, 28(3); S.I. 2007/538, art. 2
- F369** Words in s. 41A(1) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(2)**, 121(3) (with s. 67(16))
- F370** Word in s. 41A(1) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(3)(b)**
- F371** Words in s. 41A(1) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(2)(b)**, 28(3); S.I. 2007/538, art. 2
- F372** S. 41A(1A) inserted (26.1.2009) by Climate Change Act 2008 (c. 27), s. 100(5), **Sch. 8 para. 3(3)**
- F373** S. 41A(2) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), **ss. 16(3)**, 28(3); S.I. 2007/538, art. 2
- F374** S. 41A(2A) inserted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(3)**, 121(3) (with s. 67(16))
- F375** Words in s. 41A(3) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(4)**, 121(3) (with s. 67(16))
- F376** Words in s. 41A(3) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), **Sch. para. 5(3)**; S.I. 2007/538, art. 2
- F377** Words in s. 41A(3) omitted (1.1.2013) by virtue of Energy Act 2011 (c. 16), s. 121(5)(b), **Sch. 1 para. 4(4)**
- F378** Words in s. 41A(4) substituted (18.12.2011) by Energy Act 2011 (c. 16), **ss. 67(5)**, 121(3) (with s. 67(16))

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- F379** Words in s. 41A(4) substituted (26.1.2009) by [Climate Change Act 2008 \(c. 27\)](#), s. 100(5), **Sch. 8 para. 3(5)**
- F380** S. 41A(4)(a) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(5)**
- F381** Words in s. 41A(5) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(4)(a)**; S.I. 2007/538, art. 2
- F382** Words in s. 41A(5)(a) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(6)(a)**
- F383** Words in s. 41A(5)(b) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(4)(b)**; S.I. 2007/538, art. 2
- F384** Ss. 41A(5)(ba)-(be) (c) substituted for (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(a)**, 121(3) (with s. 67(16))
- F385** Word in s. 41A(5)(d) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(6)(b)**
- F386** Words in s. 41A(5)(d) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(b)**, 121(3) (with s. 67(16))
- F387** Words in s. 41A(5)(d) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(4)(d)**; S.I. 2007/538, art. 2
- F388** Words in s. 41A(5)(e) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(c)(i)**, 121(3) (with s. 67(16))
- F389** Words in s. 41A(5)(e)(i) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(4)(e)(i)**; S.I. 2007/538, art. 2
- F390** S. 41A(5)(e)(ii) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(c)(ii)**, 121(3) (with s. 67(16))
- F391** Word in s. 41A(5)(f) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(6)(c)**
- F392** Words in s. 41A(5)(f) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(d)**, 121(3) (with s. 67(16))
- F393** Words in s. 41A(5)(f) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(4)(d)**; S.I. 2007/538, art. 2
- F394** S. 41A(5)(g) and preceding word inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(6)(e)**, 121(3) (with s. 67(16))
- F395** S. 41A(5A)(5B) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(7)**, 121(3) (with s. 67(16))
- F396** Words in s. 41A(6) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(8)**, 121(3) (with s. 67(16))
- F397** Word in s. 41A(6) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(7)**
- F398** Words in s. 41A(6) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(5)**; S.I. 2007/538, art. 2
- F399** Words in s. 41A(7)(a)(b) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(6)**; S.I. 2007/538, art. 2
- F400** Words in s. 41A(7)(d)(e) substituted (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), s. 28(3), **Sch. para. 5(6)**; S.I. 2007/538, art. 2; S.I. 2007/538, art. 2
- F401** Words in s. 41A(7)(d) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(8)**
- F402** S. 41A(7A)(7B) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(9)**, 121(3) (with s. 67(16))
- F403** S. 41A(8)(b) omitted (18.12.2011) by virtue of [Energy Act 2011 \(c. 16\)](#), **ss. 67(10)**, 121(3) (with s. 67(16))
- F404** Word in s. 41A(8)(d) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(9)**
- F405** S. 41A(9A)(9B) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(11)**, 121(3) (with s. 67(16))
- F406** S. 41A(10A) substituted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(12)**, 121(3) (with s. 67(16))

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- F407** Words in s. 41A(11) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(12)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F408** Words in s. 41A(11) omitted (1.1.2013) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(b), **Sch. 1 para. 4(10)**
- F409** S. 41A(12A)(12B) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(13)**, 121(3) (with s. 67(15)(16))
- F410** S. 41A(13)(14) added (28.2.2007) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), **ss. 16(5)**, 28(3); S.I. 2007/538, art. 2
- F411** Words in s. 41A(13) inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 67(14)**, 121(3) (with s. 67(16))
- F412** Words in s. 41A(13) inserted (26.1.2009) by [Climate Change Act 2008 \(c. 27\)](#), s. 100(5), **Sch. 8 para. 3(11)**

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

- C89** S. 41A(2) modified (15.12.2001) by [S.I. 2001/4011](#), **art. 5**

#### Marginal Citations

- M7** 1986 c. 44.

### [<sup>F413</sup> 41A] **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).

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- (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
  - (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.]

#### Textual Amendments

**F413** S. 41AA inserted (1.12.2017 for specified purposes, 1.10.2018 in so far as not already in force) by Scotland Act 2016 (c. 11), ss. 59(5), 72(4)(d) (with s. 59(7)); S.I. 2017/1157, regs. 3(b), 5(a)

#### [<sup>F414</sup>41B Promotion of reductions in home-heating costs: electricity distributors and electricity suppliers

- (1) The Secretary of State may by order impose—
- (a) on each electricity distributor (or each electricity distributor of a specified description); and
  - (b) on each electricity supplier (or each electricity supplier of a specified description),
- an obligation to achieve, within a specified period and in accordance with the order, the home-heating cost reduction target to be determined by the Administrator under the order for that distributor or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”).
- (2) In this section—
- (a) “the Administrator” means—
    - (i) the Authority; or
    - (ii) if the order so provides, the Secretary of State or a specified body other than the Authority;
  - (b) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes;
  - (c) “specified” means specified in the order.
- (3) The power to make orders under this section may be exercised so as to impose more than one home-heating cost reduction obligation on a person in relation to the same period or to periods that overlap to any extent.
- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12B) of section 41A apply to an order under this section as they apply to an order under that section, with the following modifications—
- (a) for “carbon emissions reduction obligation” (in each place) substitute “home-heating cost reduction obligation”;

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- (b) for “carbon emissions reduction obligations” (in each place) substitute “home-heating cost reduction obligations”;
  - (c) for “carbon emissions reduction target” (in each place other than in paragraph (be) of subsection (5)) substitute “home-heating cost reduction target”;
  - (d) for “carbon emissions reduction targets” (in each place) substitute “home-heating cost reduction targets”; and
  - (e) omit paragraph (a) of subsection (10A).
- (5) Subsections (4) and (9B) of section 41A apply to the carrying out by the Secretary of State and the Administrator of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section.
- (6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.]

#### Textual Amendments

**F414** S. 41B inserted (18.12.2011) by [Energy Act 2011 \(c. 16\)](#), **ss. 69**, 121(3)

#### [<sup>F415</sup> **41B** 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 ”;
  - (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 ”;

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- (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.
- (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,

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- (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.]

#### Textual Amendments

**F415** S. 41BA inserted (1.12.2017 for specified purposes, 1.10.2018 in so far as not already in force) by Scotland Act 2016 (c. 11), ss. 59(6), 72(4)(d) (with s. 59(7)); S.I. 2017/1157, regs. 3(b), 5(a)

## 42 Information with respect to levels of performance.

- (1) The Director shall from time to time collect information with respect to—
- (a) the compensation made by <sup>F416</sup>electricity suppliers] under section 39 above;
  - (b) the levels of overall performance achieved by such suppliers in connection with the provision of electricity supply services; <sup>F417</sup> . . .
  - (c) . . . . .
- <sup>F418</sup>(1A) The Authority shall from time to time collect information with respect to—
- (a) the compensation made by electricity distributors under section 39A above;
  - (b) the levels of overall performance achieved by electricity distributors.]
- (2) <sup>F419</sup>At such times] as may be specified in a direction given by the Director, each <sup>F420</sup>electricity supplier] shall furnish to the Director the following information, namely—
- (a) as respects each standard prescribed by regulations under section 39 above, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
  - (b) as respects each standard determined under section 40 <sup>F421</sup> . . . , such information with respect to the level of performance achieved by the supplier as may be so specified.
- <sup>F422</sup>(2A) At such times as may be specified in a direction given by the Authority, each electricity distributor shall furnish to the Authority the following information, namely—

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- (a) as respects each standard prescribed by regulations under section 39A, the number of cases in which compensation was made and the aggregate amount or value of that compensation; and
- (b) as respects each standard determined under section 40A, such information with respect to the level of performance achieved by the distributor as may be so specified.]

<sup>F423</sup>(3) .....

<sup>F424</sup>(4) .....

<sup>F424</sup>(5) .....

#### Textual Amendments

- F416** Words in s. 42(1)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(a)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F417** S. 42(1)(c) and the word “and” immediately preceding it repealed (1.10.2001) by 2000 c. 27, ss. 57(2), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F418** S. 42(1A) inserted (1.10.2001) by 2000 c. 27, s. 57(3); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F419** Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, s. 57(4); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F420** Words in s. 42(2) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 34(b)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F421** Words in s. 42(2)(b) repealed (1.10.2001) by 2000 c. 27, ss. 57(4), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F422** S. 42(2A) inserted (1.10.2001) by 2000 c. 27, s. 57(5); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F423** S. 42(3) repealed (1.10.2001) by 2000 c. 27, ss. 57(6), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F424** S. 42(4)(5) repealed (1.10.2001) by 2000 c. 27, ss. 20(7), 108, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

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

- C90** S. 42: functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, **Sch.** (with art. 6)

#### <sup>F425</sup>42A Information to be given to customers about overall performance.

- (1) The Authority may make regulations requiring such information as may be specified or described in the regulations about—
  - (a) the standards of overall performance determined under section 40 or 40A; and
  - (b) the levels of performance achieved as respects those standards,
 to be given by electricity suppliers or electricity distributors to customers or potential customers of electricity suppliers.
- (2) Regulations under this section may include provision—
  - (a) specifying the form and manner in which and the frequency with which information is to be given; and
  - (b) requiring information about the matters mentioned in subsection (1)(a) or (b) and relating to electricity distributors to be given by electricity distributors to

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electricity suppliers and by electricity suppliers to their customers or potential customers.]

#### Textual Amendments

**F425** S. 42A substituted (16.5.2001 for certain purposes and otherwise 1.10.2001) by 2000 c. 27, s. 58; S.I. 2001/1781, art. 2, Sch. (subject to transitional provisions in arts. 3-10); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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

**C91** S. 42A continued (with modifications) (1.10.2001) by S.I. 2001/3266, arts. 1(2), 9(1)

### [<sup>F426</sup>42A] **Publication of statistical information about standards of performance.**

(1) [<sup>F427</sup>It shall be the duty of both Citizens Advice and Citizens Advice Scotland to secure the publication, in such form and manner and with such frequency as the particular body thinks appropriate, of such statistical information as the particular body considers appropriate] relating to—

(a) the levels of performance achieved by <sup>F428</sup>... electricity suppliers and electricity distributors in respect of—

(i) standards of performance prescribed or determined under sections 39, 39A, 40 and 40A; and

(ii) [<sup>F429</sup>carbon emissions reduction obligations] imposed by order under section 41A; and

[home-heating cost reduction obligations imposed by order under <sup>F430</sup>(iii) section 41B; and]

(b) complaints made by consumers about any matter relating to the activities of such <sup>F431</sup>... suppliers or distributors and the handling of such complaints.

[Citizens Advice and Citizens Advice Scotland may comply with the duty in <sup>F432</sup>(1A) subsection (1) by publishing information jointly or by securing that information is published on behalf of both of them.]

(2) In subsection (1)(b) “complaints” includes complaints made directly to <sup>F433</sup>... electricity suppliers and electricity distributors (or anyone carrying on activities on their behalf) and complaints to the Authority [<sup>F434</sup>, Citizens Advice or Citizens Advice Scotland].]

#### Textual Amendments

**F426** S. 42AA inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by 2000 c. 27, s. 20(6); S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F427** Words in s. 42AA(1) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 5(13)(a) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

**F428** Words in s. 42AA(1)(a) omitted (6.4.2014) by virtue of Energy Act 2011 (c. 16), s. 121(5)(c), Sch. 1 para. 5(2)(a)

**F429** Words in s. 42AA(1)(a)(ii) substituted (28.2.2007) by Climate Change and Sustainable Energy Act 2006 (c. 19), s. 28(3), Sch. para. 6; S.I. 2007/538, art. 2

**F430** S. 42AA(1)(a)(iii) inserted (6.4.2014) by Energy Act 2011 (c. 16), s. 121(5)(c), Sch. 1 para. 5(2)(b)

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- F431** Word in s. 42AA(1)(b) omitted (6.4.2014) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(c), [Sch. 1 para. 5\(3\)](#)
- F432** S. 42AA(1A) inserted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 5\(13\)\(b\)](#) (with [Sch. 1 para. 28](#), [Sch. 2 paras. 13-15](#))
- F433** Words in s. 42AA(2) omitted (6.4.2014) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(c), [Sch. 1 para. 5\(4\)](#)
- F434** Words in s. 42AA(2) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), [Sch. 1 para. 5\(13\)\(c\)](#) (with [Sch. 1 para. 28](#), [Sch. 2 paras. 13-15](#))

## <sup>F435</sup> **42A** Information relating to complaints handling standards

- (1) This section applies in relation to standards prescribed by the Authority by regulations under section 43 of the [Consumers, Estate Agents and Redress Act 2007](#) (standards for complaints handling) in relation to licence holders (or some of them).
- (2) The Authority must from time to time collect information with respect to the levels of compliance with the standards which those licence holders have achieved.
- (3) At such times as the Authority may direct, each of those licence holders must give the Authority such information as the Authority may direct with respect to the levels of compliance with the standards which the licence holder has achieved.]

### Textual Amendments

- F435** S. 42AB inserted (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), s. 66(2), [Sch. 5 para. 2\(3\)](#) (with [s. 48\(3\)](#)); [S.I. 2008/2550](#), art. 2, [Sch.](#)

## <sup>F436</sup> <sup>F437</sup> **42B** Procedures for dealing with complaints.

- (1) Each public electricity supplier shall establish a procedure for dealing with complaints made by his customers or potential customers in connection with the provision of electricity supply services.
- (2) No such procedure shall be established, and no modification of such a procedure shall be made, unless—
  - <sup>F438</sup>(a) .....
  - (b) the proposed procedure or modification has been approved by the Director.
- (3) The supplier shall—
  - (a) publicise the procedure in such manner as may be approved by the Director; and
  - (b) send a description of the procedure, free of charge, to any person who asks for one.
- (4) The Director may give a direction to any public electricity supplier requiring the supplier to review his procedure or the manner in which it operates.
- (5) A direction under subsection (4) above—
  - (a) may specify the manner in which the review is to be conducted; and
  - (b) shall require a written report of the review to be made to the Director.

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- (6) Where the Director receives a report under subsection (5)(b) above, he may, after consulting the supplier, direct him to make such modifications of—
  - (a) the procedure; or
  - (b) the manner in which the procedure operates,as may be specified in the direction.
- (7) Subsection (2) above does not apply to any modification made in compliance with a direction under subsection (6) above.]

#### Textual Amendments

- F436** S. 42B inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\), s. 22](#); Commencement Order No. 1 made on 29.5.1992, art. 3, Sch. Pt. I
- F437** S. 42B ceased to have effect (7.11.2000) by virtue of [2000 c. 27, s. 108, Sch. 6 Pt. II para. 35; S.I. 2000/2974, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-12](#))
- F438** S. 42B(2)(a) repealed (7.11.2000) by [2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-12](#))

#### [<sup>F439</sup>42C Remuneration and service standards.

- (1) This section applies to any company which is authorised by a licence to carry on activities subject to price regulation.
- (2) As soon as reasonably practicable after the end of each financial year of the company it must make a statement to the Authority—
  - (a) disclosing whether or not remuneration has been paid or become due during that financial year to the directors of the company as a result of arrangements falling within subsection (3); and
  - (b) where such remuneration has been paid or become due, describing the arrangements and the remuneration.
- (3) Arrangements fall within this subsection if they are arrangements for linking the remuneration of the directors of the company to levels of performance as respects service standards in connection with activities subject to price regulation.
- (4) A description under subsection (2)(b) must include in particular—
  - (a) a statement of when the arrangements were made;
  - (b) a description of the service standards in question;
  - (c) an explanation of the means by which the levels of performance as respects those service standards are assessed; and
  - (d) an explanation of how the remuneration was calculated.
- (5) The statement required by subsection (2) must also state—
  - (a) whether or not there are in force in respect of the financial year during which the statement is made arrangements falling within subsection (3); or
  - (b) if not, whether the company intends that such arrangements will be in force at some time during that financial year,and if there are, or it is intended that there will be, such arrangements in force the statement must describe those arrangements.
- (6) A description under subsection (5) must—

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- (a) include in particular the matters listed in subsection (4)(a), (b) and (c); and
  - (b) where the arrangements described are different from any arrangements described under subsection (2)(b), state the likely effect of those differences on the remuneration of each director of the company.
- (7) The statement required by subsection (2) must be made to the Authority in such manner as may be required by the Authority.
- (8) The statement required by subsection (2)—
- (a) must be published by the company making the statement in such manner as it reasonably considers will secure adequate publicity for it; and
  - (b) may be published by the Authority in such manner as it may consider appropriate.
- (9) The duty of a company under this section applies in respect of any person who has at any time been a director of the company.
- (10) In this section—
- “activities subject to price regulation”, in relation to any company, are activities for which—
- (a) a maximum price which may be charged by the company, or a method for calculating such a maximum price; or
  - (b) a maximum revenue which may be received by the company, or a method for calculating such a maximum revenue,
- is determined by or under the licence granted under this Part;
- [<sup>F440</sup>“company” means a company (as defined in section 1(1) of the Companies Act 2006) that—
- (a) is limited by shares, and
  - (b) has its registered office in Great Britain.]

“remuneration” in relation to a director of a company—

    - (a) means any form of payment, consideration or other benefit (including pension benefit), paid or due to or in respect of the director; and
    - (b) includes remuneration in respect of any of his services while a director of the company;

“service standards” in relation to any company, means standards relating to the quality of service received by customers or potential customers of the company, including any such standards which are—

    - (a) set by or under any conditions included in a licence granted under this Part;
    - (b) prescribed by the Authority in regulations made under section 39 or 39A;
    - (c) determined by the Authority under section 40 or 40A; or
    - (d) set or agreed to by the company.]

#### Textual Amendments

**F439** S. 42C inserted (1.10.2001) by 2000 c. 27, s. 61; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

**F440** Words in s. 42C(10) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), Sch. 1 para. 102(2) (with art. 10)

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*Consumer protection: miscellaneous*

**43 Functions with respect to competition.**

<sup>F441</sup>(1) .....

<sup>F442</sup>(2) The functions to which subsection (2A) below applies shall be concurrent functions of the Authority and the <sup>F443</sup>CMA] .

(2A) This subsection applies to the functions of the <sup>F444</sup>CMA] under Part 4 of the Enterprise Act 2002 (other than sections 166 <sup>F445</sup>, 171 and 174E]) so far as <sup>F446</sup>those functions—

- (a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and
- (b) relate to] commercial activities connected with the generation, transmission or supply of electricity <sup>F447</sup>or the use of electricity interconnectors]

(2B) So far as necessary for the purposes of, or in connection with, subsections (2) and (2A) <sup>F448</sup>above—

- (a) references] in Part 4 of the Act of 2002 to the <sup>F449</sup>CMA] (including references in provisions of that Act applied by that Part) shall be construed as including references to the Authority (except in sections 166 <sup>F450</sup>, 171 and 174E]) of that Act and in any other provision of that Act where the context otherwise <sup>F451</sup>requires);
- (b) references in that Part to section 5 of the Act of 2002 are to be construed as including references to section 47(1) of this Act.]]

<sup>F452</sup>(2C) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the Authority by virtue of subsections (2) and (2A)—

- (a) as if for subsection (1) of that section there were substituted—

“(1) Where the Gas and Electricity Markets Authority—

- (a) is proposing to carry out its functions under section 47(1) of the Electricity Act 1989 in relation to a matter for the purposes mentioned in subsection (2), and
- (b) considers that the matter is one in respect of which it would be appropriate for the Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with the generation, transmission or supply of electricity or the use of electricity interconnectors”.]

<sup>F453</sup>(3) The Authority shall be entitled to exercise, concurrently with the <sup>F454</sup>CMA] , the functions of the Office of Fair Trading under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) <sup>F455</sup>, 40B(1) to (4)] and 51), so far as relating to—

- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,
- (b) conduct of the kind mentioned in section 18(1) of that Act,

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- (c) agreements, decisions or concerted practices of the kind mentioned in [F<sup>456</sup>Article 101(1) of the Treaty on the Functioning of the European Union], or
- (d) conduct which amounts to abuse of the kind mentioned in [F<sup>457</sup>Article 102 of the Treaty on the Functioning of the European Union],

which relate to commercial activities connected with the generation, transmission or supply of electricity [F<sup>447</sup>or the use of electricity interconnectors].]

[F<sup>458</sup>(3A) So far as necessary for the purposes of, or in connection with, the provisions of subsection (3) above, references in Part I of the Competition Act 1998 to [F<sup>459</sup>CMA] are to be read as including a reference to [F<sup>460</sup>the Authority] ([F<sup>461</sup>except in sections 31D(1) to (6), 38(1) to (6) [F<sup>455</sup>, 40B(1) to (4)]], 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).]

[F<sup>462</sup>(4) Before the [F<sup>463</sup>CMA] or the Authority first exercises in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above, it shall consult the other.

(4A) Neither the [F<sup>463</sup>CMA] nor the Authority shall exercise in relation to any matter functions which are exercisable concurrently by virtue of subsection (2) above if functions which are so exercisable have been exercised in relation to that matter by the other.]

(5) It shall be the duty of [F<sup>460</sup>the Authority], for the purpose of assisting [F<sup>464</sup>a CMA group] in carrying out an investigation on [F<sup>465</sup>market investigation reference made by the Authority (under section 131 of the Act of 2002)] by virtue of subsection (2) [F<sup>466</sup>... above, to give to the [F<sup>467</sup>group] —

- (a) any information which is in [F<sup>468</sup>its] possession and which relates to matters falling within the scope of the investigation and—
  - (i) is requested by the [F<sup>467</sup>group] for that purpose; or
  - (ii) is information which in [F<sup>468</sup>its] opinion it would be appropriate for that purpose to give to the [F<sup>467</sup>group] without any such request; and
- (b) any other assistance which the [F<sup>467</sup>group] may require and which it is within [F<sup>468</sup>its] power to give, in relation to any such matters,

and the [F<sup>467</sup>group] shall, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.

[F<sup>469</sup>(5A) In subsection (5) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

(6) [F<sup>470</sup>If any question arises as to whether subsection (2) or (3) above applies to any particular case] [F<sup>471</sup>... F<sup>472</sup>...], that question shall be referred to and determined by the Secretary of State; and no objection shall be taken to anything done under—

- (a) [F<sup>473</sup>Part 4 of the Enterprise Act 2002]; or
- [F<sup>474</sup>(b) Part I of the Competition Act 1998 ([F<sup>475</sup>other than sections 31D(1) to (6), 38(1) to (6) [F<sup>476</sup>, 40B(1) to (4)] and 51),]

by or in relation to [F<sup>460</sup>the Authority] on the ground that it should have been done by or in relation to [F<sup>477</sup>the CMA].

[F<sup>478</sup>(6A) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by the Authority by virtue of subsection (2) above as if the references in section 117(1)(a) and (2) to the [F<sup>479</sup>CMA] included references to the Authority.]

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F480(7) .....

### Textual Amendments

- F441** S. 43(1) repealed (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 20(7)(a), **Sch. 26**; S.I. 2003/766, art. 2, Sch. (with art. 3) (as amended (20.7.2007) by S.I. 2007/1846, reg. 3(2), Sch.)
- F442** S. 43(2)-(2B) substituted for s. 43(2) (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 9 para. 18(2)**; S.I. 2003/1397, art. 2(1), Sch.
- F443** Word in s. 43(2) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(2)** (with art. 3)
- F444** Word in s. 43(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(3)(a)** (with art. 3)
- F445** Words in s. 43(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(3)(b)** (with art. 3)
- F446** Words in s. 43(2A) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(3)(c)** (with art. 3)
- F447** Words in s. 43(2A)(3) inserted (14.8.2006) by [Energy Act 2004 \(c. 20\)](#), ss. **147(5)**, 198(2); S.I. 2006/1964, art. 2, Sch.
- F448** Words in s. 43(2B) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(4)(a)** (with art. 3)
- F449** Word in s. 43(2B) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(4)(b)** (with art. 3)
- F450** Words in s. 43(2B) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(4)(c)** (with art. 3)
- F451** Words in s. 43(2B) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(4)(d)** (with art. 3)
- F452** S. 43(2C) inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(5)** (with art. 3)
- F453** S. 43(3) substituted (1.5.2004) by [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), **Sch. 2 para. 3(2)(a)**
- F454** Word in s. 43(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 65(6)** (with art. 3)
- F455** Words in s. 43(3)(3A) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 15 para. 3**; S.I. 2014/416, art. 2(1)(f) (with Sch.); S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F456** Words in s. 43(3)(c) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F457** Words in s. 43(3)(d) substituted (1.8.2012) by [The Treaty of Lisbon \(Changes in Terminology or Numbering\) Order 2012 \(S.I. 2012/1809\)](#), art. 2(1), **Sch. Pt. 1** (with art. 2(2))
- F458** S. 43(3)(3A) substituted for s. 43(3) (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 4(4)(5)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

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- F459** Words in s. 43(3A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(7)** (with art. 3)
- F460** Words substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**
- F461** Words in s. 43(3A) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(b)**
- F462** S. 43(4)(4A) substituted for s. 43(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(3)**; S.I. 2003/1397, art. 2(1), **Sch.**
- F463** Word in s. 43(4)(4A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(8)** (with art. 3)
- F464** Words in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(a)(i)** (with art. 3)
- F465** Words in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(a)(ii)** (with art. 3)
- F466** Words in s. 43(5) repealed (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), **Sch. 10 Pt. II para. 4(7)**, **Sch. 14 Pt. I** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**
- F467** Word in s. 43(5) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(9)(b)** (with art. 3)
- F468** Word substituted (20.12.2000) by virtue of Utilities Act 2000 (c. 27), **s 3(2)**; S.I. 2000/3343, art. 2, **Sch.**
- F469** S. 43(5A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(10)** (with art. 3)
- F470** Words in s. 43(6) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 14 para. 7**; S.I. 2014/416, art. 2(1)(e) (with Sch.)
- F471** Words in s. 43(6) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(4)(b)**; S.I. 2003/1397, art. 2(1), **Sch.**
- F472** Words in s. 43(6) omitted by virtue of Deregulation and Contracting Out Act 1994 (c. 40), s.81, **Sch. 17**
- F473** Words in s. 43(6)(a) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(4)(e)**; S.I. 2003/1397, art. 2(1), **Sch.**
- F474** S. 43(6)(b) substituted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10**, Pt. II para. 4(8) (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**
- F475** Words in s. 43(6)(b) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 3(2)(c)**
- F476** Words in s. 43(6)(b) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 3**; S.I. 2014/416, art. 2(1)(f) (with Sch.)
- F477** Words in s. 43(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(11)** (with art. 3)
- F478** S. 43(6A) substituted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 9 para. 18(5)**; S.I. 2003/1397, art. 2(1), **Sch.**
- F479** Word in s. 43(6A) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 65(12)** (with art. 3)

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**F480** S. 43(7) repealed (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, Sch. 9 para. 18(6), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch.

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

**C92** S. 43(2) applied (3.1.1995) by 1994 c. 40, ss. 7(2), 82(2)(a)(b), **Sch. 2 para. 4(2)**

**C93** S. 43(3) restricted (26.11.1998 for specified purposes and otherwise 1.3.2000) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. II para. 4(1)** (with s. 73); S.I. 1998/2750, **art. 2(1)(b)** (with art. 2(2)); S.I. 2000/344, art. 2, **Sch.**

**F481** **43A Adjustment of charges to help disadvantaged groups of customers.**

.....

**Textual Amendments**

**F481** S. 43B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 9**

**F481** **43B Orders: supplementary.**

.....

**Textual Amendments**

**F481** S. 43B omitted (8.6.2010) by virtue of Energy Act 2010 (c. 27), s. 38(3), **Sch. para. 9**

**[F482** **44 Maximum prices for reselling electricity.**

- (1) The Authority may from time to time direct that the maximum prices at which electricity supplied by authorised suppliers may be resold—
  - (a) shall be such as may be specified in the direction; or
  - (b) shall be calculated by such method and by reference to such matters as may be so specified;

and shall publish directions under this section in such manner as in its opinion will secure adequate publicity for them.

- (2) A direction under this section may—
  - (a) require any person who resells electricity supplied by an authorised supplier to furnish the purchaser with such information as may be specified or described in the direction; and
  - (b) provide that, in the event of his failing to do so, the maximum price applicable to the resale shall be such as may be specified in the direction, or shall be reduced by such amount or such percentage as may be so specified.

- (3) Different directions may be given under this section as respects different classes of cases, which may be defined by reference to areas or any other relevant circumstances.

- (4) If any person resells electricity supplied by an authorised supplier at a price exceeding the maximum price determined by or under a direction under this section and applicable to the resale—
  - (a) the amount of the excess; and

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- (b) if the direction so provides, interest on that amount at a rate specified or described in the direction,  
shall be recoverable by the person to whom the electricity was resold.]

#### Textual Amendments

**F482** S. 44 substituted (1.10.2001) by 2000 c. 27, s. 73(1) (with s. 73(2)); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

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

**C94** S. 44(1)(2)(b): functions transferred to Scottish Ministers (S.) (14.12.2000) by virtue of S.I. 2000/3253, arts. 1(1), 2, Sch. (with art. 6)

### <sup>F483</sup> <sup>F484</sup> Article 37] Disputes

#### Textual Amendments

**F483** Ss. 44B-44D and cross-heading inserted (E.W.S.) (29.6.2009) by The Gas and Electricity (Dispute Resolution) Regulations 2009 (S.I. 2009/1349), regs. 1(1), 3

**F484** Words in s. 44B cross heading substituted (10.11.2011) by The Electricity and Gas (Internal Markets) Regulations 2011 (S.I. 2011/2704), regs. 1(1), 29(2)(a)

## 44B Meaning of “<sup>F485</sup>Article 37]dispute”

<sup>F486</sup>(1) For the purposes of sections 44C and 44D a dispute is an “Article 37 dispute” if—

- (a) it arises from a written complaint—
- (i) made against the holder of a transmission licence,
  - (ii) made against the holder of a distribution licence,
  - (iii) made against the holder of an interconnector licence,
  - (iv) made against a distribution exemption holder, or
  - (v) made by a person falling within paragraph (a) of subsection (1A) against a person falling within paragraph (b) of that subsection;
- (b) it is wholly or mainly a dispute regarding an obligation of the person complained against under any relevant condition or relevant requirement in relation to that person imposed for the purpose of implementing the Electricity Directive; and
- (c) it is a dispute between the complainant and the person complained against.

(1A) For the purposes of subsection (1)(a)(v)—

- (a) a person falls within this paragraph if the person is certified on the ground mentioned in section 10E(5) in respect of a transmission system or electricity interconnector;
- (b) a person falls within this paragraph if the person is designated under section 10H(3) in respect of the transmission system or electricity interconnector mentioned in paragraph (a).]

(2) The reference in subsection <sup>F487</sup>(1)(a)] to a complaint does not include a reference to—

- (a) a complaint about a modification (or failure to make a modification) of—

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- (i) a term or condition of [<sup>F488</sup>a licence] held by the person complained against, or
  - (ii) an obligation or right contained in any code or other document and having effect by virtue of such a term or condition; or
- (b) a complaint made by a person as a household customer or potential household customer.

[<sup>F489</sup>(3) In this section, “household customer” means a customer who purchases electricity for consumption by the customer’s own household.]

#### Textual Amendments

- F485** Words in s. 44B heading substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(2)(b)**
- F486** S. 44B(1)(1A) substituted for s. 44B(1) (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(3)(a)**
- F487** Words in s. 44B(2) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(3)(b)(i)**
- F488** Words in s. 44B(2)(a)(i) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(3)(b)(ii)**
- F489** S. 44B(3) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(3)(c)**

#### 44C Determination of disputes

- (1) An [<sup>F490</sup>Article 37] dispute (other than one which may be referred to the Authority under or by virtue of any other provision of this Act) may be referred to the Authority under this section by the person who is the complainant in relation to the dispute.
- (2) An [<sup>F491</sup>Article 37] dispute referred to the Authority under this section shall be determined by order made either by the Authority or, if the Authority thinks fit, by an arbitrator (or in Scotland an arbiter) appointed by the Authority.
- (3) The practice and procedure to be followed in connection with an [<sup>F492</sup>Article 37] dispute referred to the Authority under this section shall be such as the Authority may consider appropriate.
- (4) An order under this section—
  - (a) may include such incidental, supplemental and consequential provision as the person making the order considers appropriate; and
  - (b) shall be final.
- (5) The provision that may be included in an order under this section by virtue of subsection (4)(a) above includes provision requiring either party to pay a sum in respect of the costs or expenses incurred by the person making the order (“costs provision”).
- (6) In including costs provision in an order under this section, the person making the order shall have regard to the conduct and means of the parties and any other relevant circumstances.
- (7) Costs provision included in an order under this section shall be enforceable—
  - (a) in England and Wales, as if it were a judgment of the county court;

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- (b) in Scotland, as if it were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff.
- [<sup>F493</sup>(8) Sections 25 to 28 have effect in relation to a person against whom a complaint is made as mentioned in section 44B(1)(a), and on whom a duty or other requirement is imposed by an order under this section—
- (a) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to that duty or requirement;
- (b) if the complaint is made against the person as mentioned in sub-paragraph (v) of section 44B(1)(a), also as if references in those sections to a regulated person included references to that person.]

#### Textual Amendments

- F490** Words in s. 44C(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(4)(a)**
- F491** Words in s. 44C(2) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(4)(a)**
- F492** Words in s. 44C(3) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(4)(a)**
- F493** S. 44C(8) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(4)(b)**

#### 44D Time limit for determinations

- (1) An order determining an [<sup>F494</sup>Article 37] dispute (whether made under section 44C or made under or by virtue of any other provision of this Act) shall be made within the permitted period.
- (2) Subject to subsection (3) <sup>F495</sup>..., the permitted period is the period of two months beginning with the day on which the dispute is referred to the Authority.
- (3) Where the person determining the dispute requests further information from anyone for the purposes of determining the dispute, the person may, by giving notice to the parties, extend the permitted period—
- (a) by two months, or
- (b) with the agreement of the complainant, by a longer period.
- <sup>F496</sup>(4) .....
- <sup>F497</sup>(5) .....
- (6) If a person refers a dispute to the Authority, or purports to do so, and the Authority gives to that person a notice—
- (a) specifying information which it requires in order to assess whether the dispute is an [<sup>F498</sup>Article 37] dispute, or whether there is a dispute at all, and
- (b) requesting the person to provide that information,
- the dispute shall be treated for the purposes of subsection (2) as not referred to the Authority until the information is provided.]

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**Textual Amendments**

- F494** Words in s. 44D(1) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(5)(a)**
- F495** Words in s. 44D(2) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(5)(b)**
- F496** S. 44D(4) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(5)(c)**
- F497** S. 44D(5) omitted (10.11.2011) by virtue of [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(5)(c)**
- F498** Words in s. 44D(6)(a) substituted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **29(5)(a)**

*Investigation of complaints*

<sup>F499</sup>**45** .....

**Textual Amendments**

- F499** S. 45 repealed (7.11.2000) by [2000 c. 27, ss. 22\(3\), 108, Sch. 8](#) (with [Sch. 7 para. 32](#)); [S.I. 2000/2974](#), [art. 2](#), [Sch.](#) (subject to transitional provisions in [arts. 3-12](#))

<sup>F500</sup>**46** **Consumer complaints.**  
.....

**Textual Amendments**

- F500** S. 46 repealed (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), s. 66(2), [Sch. 8](#); [S.I. 2008/2550](#), [art. 2](#), [Sch.](#)

<sup>F501</sup>**46A** **Power of Council to investigate other matters.**  
.....

**Textual Amendments**

- F501** S. 46A repealed (1.10.2008) by [Consumers, Estate Agents and Redress Act 2007 \(c. 17\)](#), s. 66(2), [Sch. 8](#); [S.I. 2008/2550](#), [art. 2](#), [Sch.](#)

*Other functions of Director*

<sup>F502</sup>**47ZA** **Annual report by Authority on security of electricity supply**  
.....

*Status: Point in time view as at 01/04/2019.*

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### Textual Amendments

**F502** S. 47ZA repealed (1.1.2015) by [The Electricity Capacity Regulations 2014 \(S.I. 2014/2043\)](#), regs. 1(4), 88

## 47 General functions.

(1) It shall be the duty of the Director, so far as it appears to him practicable from time to time to do so—

- (a) to keep under review the carrying on both in Great Britain and elsewhere of activities to which this subsection applies; and
- (b) to collect information with respect to those activities, and the persons by whom they are carried on, with a view to facilitating the exercise of his functions under this Part;

and this subsection applies to any activities connected with the generation, transmission and supply of electricity, including in particular activities connected with the supply to any premises of heat produced in association with electricity and steam produced from and air and water heated by such heat<sup>[F503]</sup>, and to the provision of smart meter communication services].

<sup>[F504]</sup>(1A) The activities to which subsection (1) applies also include, in particular, activities connected with the generation of electricity by microgeneration <sup>[F505]</sup>or small-scale low-carbon generation] or with the transmission and supply of electricity so generated.

<sup>[F506]</sup>(1B) In subsection (1A)—

“microgeneration” has the same meaning as in the Climate Change and Sustainable Energy Act 2006;

“small-scale low-carbon generation” has the same meaning as in section 41 of the Energy Act 2008.]

<sup>[F507]</sup>(1C) [ The activities to which subsection (1) applies also include, in particular, the matters specified in the following provisions of the Electricity Directive as matters to be monitored—

- (a) Article 26(3);
- (b) Article 37(1)(g) to (k), (m) and (q) to (t); and
- (c) where a person is certified on the ground mentioned in subsection (5) of section 10E, Article 37(3)(a), (b) and (f).]

(2) The Secretary of State may give general directions indicating—

- (a) considerations to which the Director should have particular regard in determining the order of priority in which matters are to be brought under review in performing his duty under subsection (1)(a) or (b) above; and
- (b) considerations to which, in cases where it appears to the Director that any of his functions under this Part are exercisable, he should have particular regard in determining whether to exercise those functions.

(3) It shall be the duty of the Director, where either he considers it expedient or he is requested by the Secretary of State or <sup>[F508]</sup>the CMA] to do so, to give information, advice and assistance to the Secretary of State or <sup>[F508]</sup>the CMA] with respect to any matter in respect of which any function of the Director under this Part is exercisable.

<sup>[F509]</sup>(4) . . . . .]

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### Textual Amendments

- F503** Words in s. 47(1) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **10**
- F504** S. 47(1A)(1B) inserted (21.8.2006) by [Climate Change and Sustainable Energy Act 2006 \(c. 19\)](#), **ss. 9, 28(1)**
- F505** Words in s. 47(1A) inserted (26.1.2009) by [Energy Act 2008 \(c. 32\)](#), s. 110(2), **Sch. 5 para. 4(a)**; S.I. 2009/45, art. 2(e)(iv)
- F506** S. 47(1B) substituted (26.1.2009) by [Energy Act 2008 \(c. 32\)](#), s. 110(2), **Sch. 5 para. 4(b)**; S.I. 2009/45, art. 2(e)(iv)
- F507** S. 47(1C) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **31(2)**
- F508** Words in s. 47(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 66** (with art. 3)
- F509** S. 47(4) repealed (7.11.2000) by [2000 c. 27](#), s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in [arts. 3-12](#))

### [<sup>F510</sup>47A Power to require information etc for the purpose of monitoring

- (1) The Authority may, for the purpose of performing its duty under subsection (1)(a) or (b) of section 47 in relation to activities falling within subsection (1C) of that section, serve a notice under subsection (2) on any regulated person.
- (2) A notice under this subsection is a notice signed by the Authority which—
  - (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the Authority any documents which are specified or described in the notice and are in that person's custody or under that person's control; or
  - (b) requires that person, if that person is carrying on a business, to furnish, at a time and place and in the form and manner specified in the notice, to the Authority such information as may be specified or described in the notice.
- (3) In paragraphs (a) and (b) of subsection (2) the reference to the Authority includes a reference to a person appointed by the Authority for the purpose of exercising the power in question.
- (4) Sections 25 to 27 have effect in relation to a person on whom a notice is served under subsection (2) as if references in those sections to a relevant requirement (other than the reference in section 25(8)) included references to a requirement of that notice.
- (5) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is liable—
  - (a) on summary conviction—
    - (i) in England and Wales, to a fine not exceeding the statutory maximum, and
    - (ii) in Scotland, to a fine not exceeding £5,000; or
  - (b) on conviction on indictment, to a fine.]

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#### Textual Amendments

**F510** S. 47A inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **31(3)**

### 48 Publication of information and advice.

- [<sup>F511</sup>(1) If it appears to the Authority that the publication of any advice and information would promote the interests of consumers in relation to electricity conveyed by distribution systems [<sup>F512</sup>or transmission systems], the Authority may publish that advice or information in such manner as it thinks fit.
- (2) In publishing advice or information under this section the Authority shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the Authority, seriously and prejudicially affect the interests of that individual or body.
- (2A) Before deciding to publish under this section any advice or information relating to a particular individual or body of persons the Authority shall consult that individual or body.]
- (3) [<sup>F513</sup>The CMA] shall consult the Director before publishing under [<sup>F514</sup>section 6 of the Enterprise Act 2002] any information or advice which may be published by the Director under this section.
- [<sup>F515</sup>(4) In this section “consumers” includes both existing and future consumers.]

#### Textual Amendments

- F511** S. 48(1)(2)(2A) substituted for s. 48(1)(2) (20.12.2000) by [2000 c. 27, s. 6\(2\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#))
- F512** Words in s. 48(1) inserted (1.4.2006 for specified purposes, 1.4.2010 in so far as not already in force) by [Energy Act 2004 \(c. 20\), s. 179\(2\)\(3\)\(c\), 198\(2\)](#); [S.I. 2005/2965, art. 3](#)
- F513** Words in s. 48(3) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 67](#) (with art. 3)
- F514** Words in s. 48(3) substituted (20.6.2003) by [Enterprise Act 2002 \(c. 40\), s. 279, Sch. 25 para. 20\(10\)\(b\)](#); [S.I. 2003/1397, art. 2\(1\), Sch.](#) (with art. 8)
- F515** S. 48(4) inserted (20.12.2000) by [2000 c. 27, s. 6\(2\)](#); [S.I. 2000/3343, art. 2, Sch.](#) (subject to transitional provisions in [arts. 3-15](#)) (as amended by [S.I. 2001/1780, art. 2](#))

### 49 Keeping of register.

- (1) The Director shall, <sup>F516</sup>... in such form as he may determine, maintain a register for the purposes of this Part.
- (2) Subject to subsection (3) and to any direction given under subsection (4) below, the Director shall cause to be entered in the register the provisions of—
- every licence and every exemption granted to a particular person;
  - every modification or revocation of a licence;
  - every direction or consent given or determination made under a licence; <sup>F517</sup>...

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- (d) every final or provisional order, every revocation of such an order and every notice under section 25(6) above [<sup>F518</sup>]; and
  - (e) every penalty imposed under section 27A(1) and every notice under section 27A(5)].
- [<sup>F519</sup>(3) The Authority may enter the provisions of anything in the register in a manner that excludes, so far as practicable, so much of the details of those provisions as it considers it appropriate to exclude for the purpose of maintaining the confidentiality of—
- (a) matters relating to the affairs of an individual the publication of which would or might, in its opinion, seriously and prejudicially affect the interests of that individual; and
  - (b) matters relating specifically to the affairs of a particular body of persons the publication of which would or might, in the Authority’s opinion, seriously and prejudicially affect the interests of that body.]
- (4) If it appears to the Secretary of State that the entry of any provision in the register would be against the public interest or the commercial interests of any person, he may direct the Director not to enter that provision in the register.
- [<sup>F520</sup>(5) The contents of the register must be shown on the Authority's website.]
- (6) Any person may, on the payment of such fee as may be specified in an order [<sup>F521</sup>made by the Secretary of State], require the Director to supply him with a copy of, or extract from, any part of the register, being a copy or extract which is certified by the Director to be a true copy or extract.
- (7) Any sums received by the Director under this section shall be paid into the Consolidated Fund.

#### Textual Amendments

**F516** Words in s. 49(1) omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\)](#), **ss. 97(6)**, 115(3)(k)

**F517** Word in s. 49(2)(c) repealed (1.10.2001) by [2000 c. 27, s. 108](#), **Sch. 8**; [S.I. 2001/3266, art. 2](#), **Sch.** (subject to transitional provisions in [arts. 3-20](#))

**F518** S. 49(2)(e) and the word “; and” immediately preceding it inserted (1.10.2001) by [2000 c. 27, s. 59\(3\)](#); [S.I. 2001/3266, art. 2](#), **Sch.** (subject to transitional provisions in [arts. 3-20](#))

**F519** S. 49(3) substituted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 183(3)**, 198(2); [S.I. 2004/2575, art. 2\(1\)](#), **Sch. 1**

**F520** S. 49(5) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 97(7)**, 115(3)(k)

**F521** Words in s. 49(6) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), **ss. 97(8)**, 115(3)(k)

#### [<sup>F522</sup>49A Reasons for decisions.

- (1) This section applies to the following decisions of the Authority or the Secretary of State, namely—
- (a) the revocation of a licence;
  - (b) the modification of the conditions of a licence;
  - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 7(3)(a) or (b);
  - (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 7(3)(c);
  - (e) the determination of a dispute referred under section 23(1);

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- (f) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the Authority or the Secretary of State shall publish a notice stating the reasons for the decision in such manner as it or he considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested.
- (3) The Authority shall send a copy of a notice published in respect of a decision mentioned in paragraph (a), (b), (c), (d) or (f) of subsection (1) to the licence holder to whose licence, or to whom, the decision relates.
- (4) In preparing a notice under subsection (2) the Authority or the Secretary of State shall have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where it or he considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (5) This section does not apply to a decision resulting in any provision which the Secretary of State has under section 49(4) directed the Authority not to enter in the register required to be kept under that section.]

**Textual Amendments**  
**F522** S. 49A inserted (1.10.2001) by 2000 c. 27, s. 42; S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

<sup>F523</sup>**50** .....

**Textual Amendments**  
**F523** S. 50 repealed (20.12.2000 subject to saving in Sch. of commencing S.I.) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/3343, art. 2 (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2) and subject to an amendment (1.10.2001) by 2000 c. 27, s. 108, Sch. 7 Pt. IV para. 29(5); S.I. 2001/3266, art. 2, Sch. (subject to transitional provisions in arts. 3-20)

*Provisions with respect to committees*

<sup>F524</sup>**51** .....

**Textual Amendments**  
**F524** S. 51 repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

<sup>F525</sup>**52** .....

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**Textual Amendments**

**F525** S. 52 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

<sup>F526</sup>**53** .....

**Textual Amendments**

**F526** S. 53 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

*Provisions with respect to Consumers' etc. Councils*

<sup>F527</sup>**54** .....

**Textual Amendments**

**F527** S. 54 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

<sup>F528</sup>**55** .....

**Textual Amendments**

**F528** S. 55 repealed (7.11.2000) by 2000 c. 27, s. 108, **Sch. 8**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)

**56 Continuity of employment of officers of abolished Councils.**

- (1) This section applies to any person who—
- (a) immediately before the date on which section 54 above comes into force is an officer of one of the Councils ceasing to exist by virtue of that section (in this section referred to as his “former employer”); and
  - (b) within four weeks after that date, is employed by one of the successor companies or the Director (in this section referred to as his “new employer”) in pursuance of an offer made before that date;
- and in this subsection “successor company” has the same meaning as in Part II.

<sup>F529</sup>(2) .....

- (3) [<sup>F530</sup>Chapter I of Part XIV of the Employment Rights Act 1996] (computation of period of employment) shall have effect in relation to a person to whom this section applies as if it included the following provisions, that is to say—

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- (a) the period of his employment with his former employer shall count as a period of employment with his new employer; and
  - (b) the change of employer shall not break the continuity of the period of employment.
- (4) Where this section applies to a person, the period of his employment with his former employer shall count as a period of employment with his new employer for the purposes of any provision of his contract of employment with his new employer which depends on his length of service with that employer.

#### Textual Amendments

**F529** S. 56(2) repealed (22.8.1996) by 1996 c. 18, ss. 242, 243, **Sch. 3 Pt. I** (with ss. 191-195, 202)

**F530** Words in s. 56(3) substituted (22.8.1996) by 1996 c. 18, ss. 240, 243, **Sch. 1 para. 43(2)** (with ss. 191-195, 202)

#### <sup>F531</sup> *Alteration of activities requiring licence*

#### Textual Amendments

**F531** Ss. 56A-56F and cross-heading inserted (1.10.2001) by 2000 c. 27, s. 43; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### 56A Power to alter activities requiring licence.

- (1) The Secretary of State may by order provide—
  - (a) that specified activities are to become licensable activities; or
  - (b) that specified activities are to cease to be licensable activities.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) An order under this section may make consequential, transitional, incidental or supplementary provision including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment; and
  - (b) provision modifying any standard conditions of licences or (in the case of an order under subsection (1)(a)) provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (4) An order under this section may only provide for activities to become licensable activities if they are activities connected with the generation, transmission, distribution or supply of electricity<sup>F532</sup>, or with providing a smart meter communication service].

[ For the purposes of subsection (4), activities connected with the supply of electricity<sup>F533</sup>(4A) include the following activities, whether or not carried on by a person supplying electricity—

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- (a) giving advice, information or assistance in relation to contracts for the supply of electricity to persons who are or may become customers under such contracts, and
  - (b) providing any other services to such persons in connection with such contracts.]
- (5) An order under this section providing for activities to become licensable activities may only be made on the application of the Authority made in accordance with section 56B.
- (6) An order under this section providing for activities to cease to be licensable activities may be made either—
- (a) on the application of the Authority made in accordance with section 56E; or
  - (b) following consultation by the Secretary of State in accordance with section 56F.
- (7) An order under this section may provide that it is to remain in force only for a period specified in the order.
- (8) An order shall not be made under this section unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.

#### Textual Amendments

**F532** Words in s. 56A(4) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, 11

**F533** S. 56A(4A) inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), ss. 143(2), 156(2)

#### **56B Application by Authority for order including new activities.**

- (1) If the Authority proposes to make an application for an order providing for activities to become licensable activities, it shall give notice—
- (a) stating that it proposes to make an application for an order providing for the activities to become licensable activities;
  - (b) setting out the conditions which it would expect such an order to determine to be standard conditions for the purposes of licences authorising the undertaking of the activities and any other conditions which it would expect to be included in such licences; and
  - (c) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given by serving a copy on [<sup>F534</sup>Citizens Advice and Citizens Advice Scotland] and by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to it to be carrying on, or be intending to carry on, the activities; and
  - (b) any other persons appearing to it to be likely to be affected by an order providing for the activities to become licensable activities.

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- (3) If an objection has been duly made (and not withdrawn) by a person who is carrying on or intends to carry on the activities, the Authority [<sup>F535</sup>shall, before making the application, make a reference under section 56C to the CMA] .
  - (4) In any other case where the Authority considers it appropriate to make a reference to the [<sup>F536</sup>CMA] under section 56C before making the application, the Authority may make such a reference.
  - (5) If a reference is made to the [<sup>F536</sup>CMA] , the application shall not be made unless the [<sup>F536</sup>CMA] has reported on the reference that the fact that the activities to which the application relates are not licensable activities operates, or may be expected to operate, against the public interest.
  - (6) The application shall set out—
    - (a) the activities which the Authority considers should become licensable activities; and
    - (b) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities in question and any other conditions which it would expect to be included in such licences.
- [ The functions of the CMA with respect to a reference under section 56C (including <sup>F537</sup>(7) functions under sections 109 to 115 of the Enterprise Act 2002, as applied by section 56CB) are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.]

#### Textual Amendments

- F534** Words in s. 56B(2) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(14)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F535** Words in s. 56B(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 38(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F536** Word in s. 56B(4)(5) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 38(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F537** S. 56B(7) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 38(4)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### 56C References to [<sup>F538</sup>CMA] .

- (1) A reference to the [<sup>F539</sup>CMA] under this section shall require [<sup>F540</sup>the CMA] to investigate and report on whether the fact that the activities specified in the reference are not licensable activities operates, or may be expected to operate, against the public interest.
- (2) The Authority may, at any time, by notice given to the [<sup>F541</sup>CMA] vary the reference by adding to the activities specified in the reference or by excluding from the reference some of the activities so specified; and on receipt of such notice the [<sup>F541</sup>CMA] shall give effect to the variation.
- (3) The Authority shall specify in the reference, or a variation of the reference, for the purpose of assisting the [<sup>F541</sup>CMA] in carrying out the investigation on the reference—

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- (a) the conditions which the Authority would expect to be determined to be standard conditions for the purposes of licences authorising the undertaking of the activities specified in the reference and any other conditions which it would expect to be included in such licences; and
  - (b) any effects adverse to the public interest which, in its opinion, the fact that the activities so specified are not licensable activities has or may be expected to have.
- (4) As soon as practicable after making the reference, or a variation of the reference, the Authority shall serve a copy of it on [<sup>F542</sup>Citizens Advice and Citizens Advice Scotland] and publish particulars of it in such manner as the Authority considers appropriate for bringing it to the attention of—
- (a) persons appearing to the Authority to be carrying on, or be intending to carry on, the activities specified in it; and
  - (b) any other persons appearing to the Authority to be likely to be affected by it.
- (5) The Authority shall, for the purpose of assisting the [<sup>F543</sup>CMA] in carrying out the investigation on the reference, give to the [<sup>F543</sup>CMA]—
- (a) any information which is in its possession and which relates to matters falling within the scope of the investigation, and which is either requested by the [<sup>F543</sup>CMA] for that purpose or is information which in its opinion it would be appropriate for that purpose to give to the [<sup>F543</sup>CMA] without any such request; and
  - (b) any other assistance which the [<sup>F543</sup>CMA] may require, and which it is within its power to give, in relation to any such matters,
- and the [<sup>F543</sup>CMA] shall take account of the information for the purpose of carrying out the investigation.
- (6) In determining for the purposes of this section whether the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, the [<sup>F543</sup>CMA] shall have regard to—
- (a) the matters referred to in section 3A;
  - (b) any social or environmental policies set out or referred to in guidance issued under section 3B; and
  - (c) any advice given by [<sup>F544</sup>the Health and Safety Executive [<sup>F545</sup>, the Office for Nuclear Regulation]] or the Secretary of State under section 3C (advice about health and safety in relation to electricity).

<sup>F546</sup>(7) .....

<sup>F546</sup>(8) ..... ]

#### Textual Amendments

- F538** Word in s. 56C heading substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 39\(4\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F539** Word in s. 56C(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 39\(2\)\(a\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F540** Word in s. 56C(1) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 39\(2\)\(b\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F541** Word in s. 56C(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), [Sch. 6 para. 39\(3\)](#); S.I. 2014/416, art. 2(1)(d) (with Sch.)

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- F542** Words in s. 56C(4) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(15)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F543** Word in s. 56C(5)(6) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 39(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.); S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F544** Words in s. 56C(6)(c) substituted (1.4.2008) by [The Legislative Reform \(Health and Safety Executive\) Order 2008 \(S.I. 2008/960\)](#), art. 1, **Sch. 3** (with art. 21, Sch. 2)
- F545** Words in s. 56C(6)(c) inserted (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), **Sch. 12 para. 62**; S.I. 2014/251, art. 4
- F546** S. 56C(7)(8) repealed (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, Sch. 25 para. 20(11), **Sch. 26**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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

- C95** S. 56C amended (16.5.2001) by [2000 c. 27](#), s. **104(1)(b)(2)** (with s. 104(6)); S.I. 2001/1781, art. 2, **Sch.** (subject to transitional provisions in arts. 3-10)

#### <sup>F547</sup> **56C References under section 56C: time limits**

- (1) Every reference under section 56C above shall specify a period (not longer than six months beginning with the date of the reference) within which a report on the reference is to be made.
- (2) A report of the <sup>F548</sup>CMA on a reference under section 56C above shall not have effect (in particular for the purposes of section 56B(5) above) unless the report is made before the end of the period specified in the reference or such further period (if any) as may be allowed by the Authority under subsection (3) below.
- (3) The Authority may, if it has received representations on the subject from the <sup>F548</sup>CMA and is satisfied that there are special reasons why the report cannot be made within the period specified in the reference, extend that period by no more than six months.
- (4) No more than one extension is possible under subsection (3) above in relation to the same reference.
- (5) The Authority shall publish an extension under subsection (3) above in such manner as it considers appropriate for the purpose of bringing it to the attention of persons likely to be affected by it.

#### Textual Amendments

- F547** Ss. 56CA, 56CB inserted (20.6.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, art. 2(1), **Sch.** (with art. 8)
- F548** Word in s. 56CA(2)(3) substituted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 40**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

#### **56CB References under section 56C: application of Enterprise Act 2002**

- (1) The following sections of Part 3 of the Enterprise Act 2002 shall apply, with the modifications mentioned in subsections <sup>F549</sup>(1A),] (2) and (3) below, for the purposes of references under section 56C above as they apply for the purposes of references under that Part—

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- (a) section 109 (attendance of witnesses and production of documents etc.);
- (b) section 110 (enforcement of powers under section 109: general);
- (c) section 111 (penalties);
- (d) section 112 (penalties: main procedural requirements);
- (e) section 113 (payments and interest by instalments);
- (f) section 114 (appeals in relation to penalties);
- (g) section 115 (recovery of penalties); and
- (h) section 116 (statement of policy).

[ Section 109 shall, in its application by virtue of subsection (1) above, have effect as <sup>F550</sup>(1A) if—

- (a) for subsection (A1), there were substituted—

“(A1) For the purposes of this section, a permitted purpose is assisting the CMA in carrying out any functions exercisable by it in connection with a reference under section 56C of the Electricity Act 1989.”, and

- (b) subsection (8A) were omitted.]

(2) Section 110 shall, in its application by virtue of subsection (1) above, have effect as if—

- (a) subsection (2) were omitted; <sup>F551</sup>...

[ after subsection (3), there were inserted—

<sup>F552</sup>(aa)

“(3A) No penalty shall be imposed by virtue of subsection (1) or (3) if more than 4 weeks have passed since the publication of the report of the CMA on the reference concerned; but this subsection shall not apply in relation to any variation or substitution of the penalty which is permitted by virtue of this Part.”; and]

- (b) in subsection (9) the words from “or section” to “section 65(3)” were omitted.

[ <sup>F553</sup>(3) Section 111(5)(b) shall, in its application by virtue of subsection (1) above, have effect as if for sub-paragraph (ii) there were substituted—

“(ii) if earlier, the day on which the report of the CMA on the reference concerned is made or, if no such report is made within the period permitted for that purpose, the latest day on which the report may be made within the permitted period.”.]

(4) Section 117 of the Enterprise Act 2002 (false or misleading information) shall apply in relation to functions of the [<sup>F554</sup>CMA] in connection with references under section 56C above as it applies in relation to its functions under Part 3 of that Act but as if, in subsections (1)(a) and (2)[<sup>F555</sup>—

- (a) the words “, OFCOM or the Secretary of State” were omitted; and
- (b) for the words “their functions” there were substituted “ its functions ”.]

(5) Provisions of Part 3 of the Enterprise Act 2002 which have effect for the purposes of sections 109 to 117 of that Act (including, in particular, provisions relating to offences and the making of orders) shall, for the purposes of the application of those sections by virtue of subsection (1) or (4) above, have effect in relation to those sections as applied by virtue of those subsections.

(6) Accordingly, corresponding provisions of this Act shall not have effect in relation to those sections as applied by virtue of those subsections.]

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### Textual Amendments

- F547** Ss. 56CA, 56CB inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(12)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F549** Word in s. 56CB(1) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(2)** (with art. 3, Sch. 2 para. 2)
- F550** S. 56CB(1A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(3)** (with art. 3, Sch. 2 para. 2)
- F551** Word in s. 56CB(2)(a) omitted (1.4.2014) by virtue of The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(4)(a)** (with art. 3, Sch. 2 para. 2)
- F552** S. 56CB(2)(aa) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(4)(b)** (with art. 3, Sch. 2 para. 2)
- F553** S. 56CB(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 68(5)** (with art. 3, Sch. 2 para. 2)
- F554** Word in s. 56CB(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 41(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F555** Words in s. 56CB(4) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 41(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)

### [<sup>F531</sup>56D Reports on references.

- (1) In making a report on a reference under section 56C, the [<sup>F556</sup>CMA] shall include in the report definite conclusions on whether the fact that the activities specified in the reference (or the reference as varied) are not licensable activities operates, or may be expected to operate, against the public interest.
  - (2) The [<sup>F557</sup>CMA] shall also include in the report such an account of its reasons for those conclusions as in its opinion is expedient for facilitating proper understanding of the questions raised by the reference and of its conclusions.
  - (3) Where the [<sup>F557</sup>CMA] concludes that the fact that particular activities are not licensable activities operates, or may be expected to operate, against the public interest, it shall specify in the report—
    - (a) the effects adverse to the public interest which that fact has or may be expected to have; and
    - (b) any modifications to the conditions specified in the reference in accordance with section 56C(3)(a) which they consider appropriate.
- [ For the purposes of section 56B(5), a conclusion contained in a report of the [<sup>F559</sup>CMA]
- <sup>F558</sup>(3A) is to be disregarded if the conclusion is not that of at least two-thirds of the members of the group constituted [<sup>F560</sup>by the chair of the CMA for the purpose of carrying out the functions of the CMA with respect to the reference].
- (3B) If a member of a group so constituted disagrees with any conclusions contained in a report made on a reference under section 56C as the conclusions of the [<sup>F561</sup>CMA] , the report shall, if the member so wishes, include a statement of his disagreement and of his reasons for disagreeing.]

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- [<sup>F562</sup>(4) For the purposes of the law relating to defamation, absolute privilege attaches to any report made by the [<sup>F561</sup>CMA] on a reference under section 56C.
- (4A) In making any report on a reference under section 56C the [<sup>F561</sup>CMA] must have regard to the following considerations before disclosing any information.
- (4B) The first consideration is the need to exclude from disclosure (so far as practicable) any information whose disclosure the [<sup>F561</sup>CMA] thinks is contrary to the public interest.
- (4C) The second consideration is the need to exclude from disclosure (so far as practicable)
- 
- (a) commercial information whose disclosure the [<sup>F561</sup>CMA] thinks might significantly harm the legitimate business interests of the undertaking to which it relates, or
- (b) information relating to the private affairs of an individual whose disclosure the [<sup>F561</sup>CMA] thinks might significantly harm the individual's interests.
- (4D) The third consideration is the extent to which the disclosure of the information mentioned in subsection (4C)(a) or (b) is necessary for the purposes of the report.]
- (5) A report of the [<sup>F563</sup>CMA] on a reference under section 56C shall be made to the Authority.
- (6) On receiving the report, the Authority shall send a copy of it to the Secretary of State.
- (7) Subject to subsection (8), the Authority shall, not less than 14 days after the copy is received by the Secretary of State, [<sup>F564</sup>send a copy of the report to Citizens Advice and Citizens Advice Scotland] and publish [<sup>F565</sup>the copy sent to Citizens Advice and Citizens Advice Scotland] in such manner as the Authority considers appropriate for bringing the report to the attention of persons likely to be affected by it.
- (8) If it appears to the Secretary of State that the publication of any matter in the report would be against the public interest or the commercial interests of any person, he may, before the end of the period of 14 days mentioned in subsection (7), direct the Authority to exclude that matter from the copy of the report to be sent to [<sup>F566</sup>Citizens Advice and Citizens Advice Scotland] and published under that subsection.

#### Textual Amendments

- F556** Words in s. 56D(1) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(2)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F557** Word in s. 56D(2)(3) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(3)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F558** S. 56D(3A)(3B) inserted (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(13)(a)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)
- F559** Words in s. 56D(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(4)(a)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F560** Words in s. 56D(3A) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(4)(b)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F561** Words in ss. 56D(3B)-(4C) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(5)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F562** S. 56D(4)-(4D) substituted for s. 56D(4) (20.6.2003) by Enterprise Act 2002 (c. 40), s. 279, **Sch. 25 para. 20(13)(b)**; S.I. 2003/1397, art. 2(1), Sch. (with art. 8)

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- F563** Word in s. 56D(5) substituted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 6 para. 42(6)**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F564** Words in s. 56D(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(a)(i)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F565** Words in s. 56D(7) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(a)(ii)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F566** Words in s. 56D(8) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(16)(b)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

## **56E Application by Authority for order excluding activities.**

- (1) Before making an application for an order providing for activities to cease to be licensable activities, the Authority shall give notice—
- (a) stating that it proposes to make an application for an order providing for the activities to cease to be licensable activities; and
  - (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,
- and shall consider any representations or objections which are duly made and not withdrawn.
- (2) The notice shall be given—
- (a) by serving a copy on the Secretary of State and the [<sup>F567</sup>, Citizens Advice and Citizens Advice Scotland] ; and
  - (b) by publishing it in such manner as the Authority considers appropriate for bringing it to the attention of persons appearing to the Authority to be likely to be affected by such an order.
- (3) An application under this section shall set out—
- (a) the activities which the Authority considers should cease to be licensable activities; and
  - (b) the Authority's reasons for proposing that the order be made.

### **Textual Amendments**

- F567** Words in s. 56E(2)(a) substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading's Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), **Sch. 1 para. 5(17)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

## **56F Consultation by Secretary of State about order excluding activities.**

- (1) If the Secretary of State proposes to make an order providing for activities to cease to be licensable activities (otherwise than on an application by the Authority under section 56E), he shall give notice—
- (a) stating that he proposes to make an order providing for the activities to cease to be licensable activities; and

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- (b) specifying a reasonable period (not being less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,  
and shall consider any representations or objections duly made (and not withdrawn).
- (2) The notice shall be given—
  - (a) by serving a copy on the Authority [<sup>F568</sup>, Citizens Advice and Citizens Advice Scotland] ; and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons appearing to him to be likely to be affected by such an order.]

#### Textual Amendments

**F568** Words in s. 56F(2)(a) substituted (1.4.2014) by [The Public Bodies \(Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc\) Order 2014 \(S.I. 2014/631\)](#), art. 1(3), **Sch. 1 para. 5(18)** (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

#### [<sup>F569</sup>56F] **New licensable activities: smart meters**

- (1) The Secretary of State may by order amend this Part so as to provide—
  - (a) for one or more activities within subsection (3) to be added to the activities which are licensable activities, or
  - (b) where an order has previously been made under paragraph (a) in relation to an activity, for the activity to cease to be a licensable activity.
- (2) For the purposes of this Part activities are licensable activities if undertaking them without the authority of a licence or exemption constitutes an offence under section 4(1).
- (3) The activities within this subsection are activities connected with the provision, installation or operation of relevant meters, including the provision or installation of infrastructure, or the provision of services, in connection with the communication of information by or to such meters.
- (4) In this section—
  - (a) “relevant meter” means a meter of a kind prescribed by the order;
  - (b) a reference to a meter includes a reference to a visual display unit, or any other device, associated with or ancillary to a meter.
- (5) An order under this section may make consequential, transitional, incidental or supplementary provision, including—
  - (a) amendments (or repeals) in any provision of this Act or any other enactment;
  - (b) in the case of an order under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Without prejudice to the generality of subsections (1) and (5), an order under this section may also make provision—

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- (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (7) An order under this section may provide that it is to remain in force only for the period specified in the order.

#### Textual Amendments

**F569** Ss. 56FA-56FC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 2](#)

### 56FB Section 56FA: supplemental

- (1) Before making an order under section 56FA, the Secretary of State must consult—
  - (a) the Authority, and
  - (b) such other persons as the Secretary of State thinks appropriate.
- (2) The power to make such an order may not be exercised after [<sup>F570</sup>1 November 2023].
- (3) An order under section 56FA may not be made unless a draft of the statutory instrument containing it has been laid before, and approved by resolution of, each House of Parliament.
- (4) Section 60 applies in relation to an order under this section as it applies in relation to regulations under this Part.

#### Textual Amendments

**F569** Ss. 56FA-56FC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 2](#)

**F570** Words in s. 56FB(2) substituted (23.5.2018) by [Smart Meters Act 2018 \(c. 14\)](#), [ss. 1\(2\)\(b\)](#), 14(2)

### 56FC Competitive tenders for licences for new licensable activities

- (1) The Secretary of State may by regulations make provision for a determination on a competitive basis of the person to whom a licence in respect of new licensable activities is to be granted.
- (2) In this section “new licensable activities” means one or more activities which are the subject of an order under section 56FA(1)(a).
- (3) The regulations may—
  - (a) provide for the determination to be made by the Secretary of State or the Authority;
  - (b) provide, in prescribed cases, for the publication of a proposal to grant a licence in respect of the new licensable activities;

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- (c) provide for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (d) impose conditions in relation to the making of an application for a licence;
  - (e) impose restrictions in relation to persons who may apply for a licence;
  - (f) impose requirements as to the period within which applications must be made;
  - (g) make provision for regulating the manner in which applications are to be considered or determined;
  - (h) authorise or require the Secretary of State or the Authority, when determining to whom a licence is to be granted, to have regard to the person's suitability for being granted both the licence and a gas licence;
  - (i) confer on the Authority or the Secretary of State functions in connection with tender exercises.
- (4) The regulations may also include provision—
- (a) enabling the Secretary of State or the Authority to require prescribed persons, in relation to a tender exercise, to make payments, in the form and manner prescribed, in respect of tender costs;
  - (b) about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of paragraph (a), and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (5) In this section—
- “gas licence” means a licence for an activity to which an order under section 41HA of the Gas Act 1986 applies;
  - “prescribed” means prescribed in or determined under regulations under this section;
  - “tender costs”, in relation to a tender exercise, means any costs incurred or likely to be incurred by the Authority or the Secretary of State for the purposes of the exercise;
  - “tender exercise” means the steps taken in accordance with regulations with a view to determining to whom a particular licence is to be granted.
- (6) Any sums received by the Secretary of State or the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.]

#### Textual Amendments

**F569** Ss. 56FA-56FC inserted (26.11.2008) by [Energy Act 2008 \(c. 32\)](#), s. 110(1)(b), [Sch. 4 para. 2](#)

#### Miscellaneous

#### [<sup>F571</sup>56G Service by Authority of certain notices on [<sup>F572</sup>Citizens Advice and Citizens Advice Scotland] .

Where the Authority is required by any provision of this Part to publish a notice or any other document, the Authority shall send a copy of the document to [<sup>F573</sup>Citizens Advice and Citizens Advice Scotland] .]

*Status: Point in time view as at 01/04/2019.*

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#### Textual Amendments

- F571** S. 56G inserted (20.12.2000) by 2000 c. 27, s. 18(6); S.I. 2000/3343, art. 2, Sch. (subject to transitional provisions in arts. 3-15) (as amended by S.I. 2001/1780, art. 2)
- F572** Words in s. 56G heading substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 5(19)(a) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)
- F573** Words in s. 56G substituted (1.4.2014) by The Public Bodies (Abolition of the National Consumer Council and Transfer of the Office of Fair Trading’s Functions in relation to Estate Agents etc) Order 2014 (S.I. 2014/631), art. 1(3), Sch. 1 para. 5(19)(b) (with Sch. 1 para. 28, Sch. 2 paras. 13-15)

<sup>F574</sup>57 .....

#### Textual Amendments

- F574** S. 57 repealed (7.11.2000) by 2000 c. 27, s. 108, Sch. 8; S.I. 2000/2974, art. 2, Sch. (subject to transitional provisions in arts. 3-12)

### 58 Directions restricting the use of certain information.

- (1) The Secretary of State may give to [<sup>F575</sup>the holder of a transmission licence] (“the authorised person”) such directions as appear to the Secretary of State to be requisite or expedient for the purpose of securing that, in any case where subsection (2) below applies, neither the person by whom the information mentioned in that subsection is acquired nor any other person obtains any unfair commercial advantage from his possession of the information.
- (2) This subsection applies where, in the course of any dealings with an outside person who is, or is an associate of, a person authorised by a licence or exemption to generate, [<sup>F576</sup>supply or participate in the transmission of] electricity [<sup>F577</sup>or to participate in the operation of electricity interconnectors][<sup>F578</sup>or to provide a smart meter communication service], the authorised person or any associate of his is furnished with or otherwise acquires any information which relates to the affairs of that outside person or any associate of his.
- (3) As soon as practicable after giving any directions under subsection (1) above, the Secretary of State shall publish a copy of the directions in such manner as he considers appropriate for the purpose of bringing the directions to the attention of persons likely to be affected by a contravention of them.
- (4) The obligation to comply with any directions under subsection (1) above is a duty owed to any person who may be affected by a contravention of them.
- (5) Where a duty is owed by virtue of subsection (4) above to any person any breach of the duty which causes that person to sustain loss or damage shall be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of subsection (5) above, it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the directions.

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(7) Without prejudice to any right which any person may have by virtue of subsection (5) above to bring civil proceedings in respect of any contravention or apprehended contravention of any directions under this section, compliance with any such directions shall be enforceable by civil proceedings by the Secretary of State for an injunction or interdict or for any other appropriate relief.

(8) In this section—

“dealings” includes dealings entered into otherwise than for purposes connected with the transmission of electricity;

“outside person”, in relation to any person, means any person who is not an associate of his;

and for the purposes of this section a person is an associate of another if he and that other are connected with each other within the meaning of [<sup>F579</sup>section 1122 of the Corporation Tax Act 2010].

#### Textual Amendments

**F575** Words in s. 58(1) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 14\(a\)](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

**F576** Words in s. 58(2) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\), s. 198\(2\), Sch. 19 para. 14\(b\)](#); [S.I. 2004/2184, art. 2\(2\), Sch. 2](#)

**F577** Words in s. 58(2) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\), ss. 147\(6\), 198\(2\)](#); [S.I. 2004/2575, art. 2\(2\), Sch. 2](#)

**F578** Words in s. 58(2) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\), arts. 1, 12](#)

**F579** Words in s. 58(8) substituted (1.4.2010) (with effect in accordance with s. 1184(1) of the amending Act) by [Corporation Tax Act 2010 \(c. 4\), s. 1184\(1\), Sch. 1 para. 218](#) (with Sch. 2)

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

**C96** S. 58: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750, arts. 1, 2, Sch. 1](#) (with art. 7)

## 59 Making of false statements etc.

(1) If any person, in giving any information or making any application under or for the purposes of any provision of this Part, or of any regulations made under this Part, makes any statement which he knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, he shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

(2) Any person who seeks to obtain entry to any premises by falsely pretending to be—

- (a) an employee of [<sup>F580</sup> or other person acting on behalf of, an electricity distributor or electricity supplier];
- (b) an electrical inspector; or
- (c) a meter examiner,

shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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- (3) No proceedings shall be instituted in England and Wales in respect of an offence under subsection (1) above except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

#### Textual Amendments

**F580** Words in s. 59(2)(a) substituted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 37**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)

### Supplemental

#### 60 Powers to make regulations.

- (1) Regulations made under any provision of this Part may provide for the determination of questions of fact or of law which may arise in giving effect to the regulations and for regulating (otherwise than in relation to any court proceedings) any matters relating to the practice and procedure to be followed in connection with the determination of such questions, including provision—
- (a) as to the mode of proof of any matter;
  - (b) as to parties and their representation;
  - (c) for the right to appear before and be heard by the Secretary of State, the Director and other authorities; and
  - (d) as to awarding costs or expenses of proceedings for the determination of such questions, including the amount of the costs or expenses and the enforcement of the awards.
- (2) Regulations made under any provision of this Part which prescribe a period within which things are to be done may provide for extending the period so prescribed.
- (3) Regulations made under any provision of this Part may—
- (a) provide for anything falling to be determined under the regulations to be determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be prescribed by the regulations;
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (c) make such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Director considers appropriate.

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

- C97** S. 60 applied (29.9.2000 for specified purposes and otherwise 7.11.2000) by 2000 c. 27, s. 27(6); S.I. 2000/2412, art. 2, **Sch.**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12)
- C98** S. 60: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, **Sch. 1** (with art. 7)

#### 61 Concurrent proceedings.

- (1) Subsection (2) below applies where a licence holder makes an application to the Secretary of State for his consent under section 36 above for the construction or

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extension of a generating station and, for a purpose connected with the proposed construction or extension of that station, makes either or both of the following, namely—

- (a) a compulsory purchase order; and
- (b) an application to the Secretary of State for authorisation under paragraph 1 of Schedule 5 to this Act (water rights for hydro-electric generating stations in Scotland).

(2) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the <sup>M8</sup>Acquisition of Land Act 1981 or Schedule 1 to the <sup>M9</sup>Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 1 of Schedule 5 to this Act, are required by paragraphs 7 to 12 of that Schedule to be taken in relation to that application,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 36 above [<sup>F581</sup>and with any related proceedings under Schedule 16 to the Energy Act 2004].

(3) Subsection (4) below applies where a licence holder makes an application to the Secretary of State for his consent under section 37 above for the installation of an electric line above ground and, for a purpose connected with the proposed installation of that line, makes one or more of the following, namely—

- (a) a compulsory purchase order;
- (b) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for a necessary wayleave; and
- (c) a reference to the Secretary of State under paragraph 9 (felling and lopping of trees) of that Schedule.

(4) The proceedings which—

- (a) in the case of a compulsory purchase order, are required by Part II of the Acquisition of Land Act 1981 or Schedule 1 to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 to be taken for the purpose of confirming that order;
- (b) in the case of an application under paragraph 6 of Schedule 4 to this Act, are required by that paragraph to be taken in relation to that application;
- (c) in the case of a reference under paragraph 9 of that Schedule, are required by that paragraph to be taken in relation to that reference,

may be taken concurrently (so far as practicable) with the proceedings required by Schedule 8 to this Act to be taken in relation to the application for consent under section 37 above.

(5) Where, for a purpose connected with the proposed installation of an electric line, a licence holder makes—

- (a) an application to the Secretary of State under paragraph 6 of Schedule 4 to this Act for the necessary wayleave; and
- (b) a reference to the Secretary of State under paragraph 9 of that Schedule,

the proceedings required by the said paragraph 9 to be taken in relation to the reference under that paragraph may be taken concurrently (so far as practicable) with the

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proceedings required by the said paragraph 6 to be taken in relation to the application under that paragraph.

#### Textual Amendments

**F581** Words in s. 61(2) inserted (1.10.2005) by [Energy Act 2004 \(c. 20\)](#), **ss. 102(2)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2

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

**C99** S. 61: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, **Sch. 1** (with art. 7)

#### Marginal Citations

**M8** 1981 c. 67.

**M9** 1947 c. 42.

## 62 Public inquiries.

- (1) The Secretary of State may cause an enquiry to be held in any case where he considers it advisable to do so in connection with any matter arising under this Part other than a matter in respect of which any functions of the Director under section 25 above are or may be exercisable <sup>F582</sup>or a matter relating to a function which is exercisable by the Scottish Ministers<sup>F583</sup>or the Welsh Ministers].
- <sup>F584</sup>(1A) The Scottish Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of a function under this Part.]
- <sup>F585</sup>(1B) The Welsh Ministers may cause an inquiry to be held in any case where they consider it advisable to do so in connection with any matter relating to the exercise by them of any function under this Part.]
- (2) The provisions of subsections (2) to (5) of section 250 of the <sup>M10</sup>Local Government Act 1972 or subsections (2) to (8) of section 210 of the <sup>M11</sup>Local Government (Scotland) Act 1973 (which relate to the giving of evidence at, and defraying the cost of, local enquiries) shall apply in relation to any inquiry held under this Part as they apply in relation to a local inquiry which a Minister causes to be held under subsection (1) of that section.
- (3) Where—
- an enquiry is to be <sup>F586</sup>caused to be held by the Secretary of State] under this Part <sup>F587</sup>or Schedule 16 to the Energy Act 2004] in connection with any matter; and
  - in the case of some other matter required or authorised (whether by this Part<sup>F588</sup>, that Schedule] or by any other enactment) to be the subject of an enquiry (“the other enquiry”), it appears to the relevant Minister or Ministers that the matters are so far cognate that they should be considered together,
- the relevant Minister or Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.
- (4) In subsection (3) above “the relevant Minister or Ministers” means the Secretary of State or, where causing the other inquiry to be held is a function of some other Minister of the Crown, the Secretary of State and that other Minister acting jointly.

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[<sup>F589</sup>(5) Where—

- (a) an inquiry is to be caused to be held by the Scottish Ministers under this Part in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Scottish Ministers, it appears to the Scottish Ministers that the matters are so far cognate that they should be considered together,

the Scottish Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.]

[<sup>F590</sup>(6) Where—

- (a) an inquiry is to be caused to be held by the Welsh Ministers under this Part or Schedule 16 to the Energy Act 2004 in connection with any matter; and
- (b) in the case of some other matter required or authorised (whether by this Part, that Schedule or by any other enactment) to be the subject of an inquiry which is to be caused to be held by the Welsh Ministers, it appears to the Welsh Ministers that the matters are so far cognate that they should be considered together,

the Welsh Ministers may direct that the two inquiries be held concurrently or combined as one inquiry.]

#### Textual Amendments

**F582** Words in s. 62(1) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(1)(2)** (with art. 7)

**F583** Words in s. 62(1) inserted (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **24(2)**

**F584** S. 62(1A) inserted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(3)** (with art. 7)

**F585** S. 62(1B) inserted (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **24(3)**

**F586** Words in s. 62(1) substituted (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(4)** (with art. 7)

**F587** Words in s. 62(3)(a) inserted (1.10.2005) by Energy Act 2004 (c. 20), **ss. 102(3)(a)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2

**F588** Words in s. 62(3)(b) inserted (1.10.2005) by Energy Act 2004 (c. 20), **ss. 102(3)(b)**, 198(2); S.I. 2005/877, art. 2(2), Sch. 2

**F589** S. 62(5) added (1.7.1999) by S.I. 1999/1750, arts. 1, 6(1), **Sch. 5 para. 8(5)** (with art. 7)

**F590** S. 62(6) inserted (24.5.2018) by The Welsh Ministers (Transfer of Functions) Order 2018 (S.I. 2018/644), arts. 1(1), **24(4)**

#### Marginal Citations

**M10** 1972 c. 70.

**M11** 1973 c. 65.

## 63 Application to Crown land.

(1) No power (whether a power of compulsory acquisition or other compulsory power, a power to carry out works or a power of entry) which is conferred by or under this Part shall, except with the consent of the appropriate authority, be exercisable in relation to any land in which there is a Crown or Duchy interest, that is to say, an interest—

- (a) belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall; or

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- (b) belonging to a government department or held in trust for Her Majesty for the purposes of a government department.
- (2) A consent given for the purposes of subsection (1) above may be given on such financial and other conditions as the appropriate authority giving the consent may consider appropriate.
- (3) Subject to subsection (1) above, the provisions of this Part shall have effect in relation to land in which there is a Crown or Duchy interest as they have effect in relation to land in which there is no such interest.
- (4) In this section “the appropriate authority”—
  - (a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;
  - (b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of the land [<sup>F591</sup> or the relevant person];
  - (c) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of that Duchy;
  - (d) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of that Duchy, appoints;
  - (e) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department;

and, if any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

[<sup>F592</sup>(5) In subsection (4), “relevant person”, in relation to any land to which section 90B(5) of the Scotland Act 1998 applies, means the person who manages that land.]

#### Textual Amendments

**F591** Words in s. 63(4)(b) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 22\(a\)](#)

**F592** S. 63(5) inserted (1.4.2017) by [The Crown Estate Transfer Scheme 2017 \(S.I. 2017/524\)](#), art. 1(2), [Sch. 5 para. 22\(b\)](#)

## 64 Interpretation etc. of Part I.

- (1) In this Part, unless the context otherwise requires—
  - “the 1973 Act” means the <sup>M12</sup> Fair Trading Act 1973;
  - “the 1980 Act” means the <sup>M13</sup> Competition Act 1980;
  - [<sup>F593</sup>“the 2013 Amending Regulations” means—
  - (a) Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 2006/1346/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009; and
  - (b) [Commission Regulation \(EU\) No 543/2013](#) of 14 June 2013 on submission and publication of data in electricity markets and amending

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Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council;]

F594

[<sup>F595</sup>“the Agency” means the Agency for the Cooperation of Energy Regulators established under the Agency Regulation;]

[<sup>F595</sup>“the Agency Regulation” means Regulation 2009/713/EC of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators;]

[<sup>F596</sup>“authorised distributor” means a person who is authorised by a licence or exemption to distribute electricity;]

[<sup>F597</sup>“authorised supplier” means a person who is authorised by a licence or exemption to supply electricity;]

[<sup>F598</sup>“the CACM Regulation” means Commission Regulation (EU) No 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management;]

[<sup>F599</sup>“the CMA” means the Competition and Markets Authority;]

[<sup>F600</sup>“construct” and “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;]

[<sup>F595</sup>“designated regulatory authority” means an authority designated in accordance with Article 35 of the Electricity Directive;]

[<sup>F595</sup>“designated regulatory authority for Great Britain” means the authority designated by virtue of section 3A of the Utilities Act 2000;]

[<sup>F596</sup>“distribute” in relation to electricity, has the meaning given by section 4(4), and cognate expressions shall be construed accordingly;]

[<sup>F595</sup>“distribution exemption holder” means a person who—

(a) is distributing electricity for the purpose mentioned in section 4(1)(bb); and

(b) is authorised to do so by an exemption;]

“electrical plant” means any plant equipment, apparatus or appliance used for, or for purposes connected with the generation, transmission<sup>[F601]</sup>, distribution] or supply of electricity, other than—

(a) an electric line;

(b) a meter used for ascertaining the quantity of electricity supplied to any premises; or

(c) an electrical appliance under the control of a consumer;

“electric line” means any line which is used for carrying electricity for any purpose and includes, unless the context otherwise requires—

(a) any support of any such line, that is to say, any structure, pole or other thing in, on, by or from which any such line is or may be supported, carried or suspended;

(b) any apparatus connected to any such line for the purpose of carrying electricity; and

(c) any wire, cable, tube, pipe or other similar thing (including its casing or coating) which surrounds or supports, or is surrounded or supported by, or is installed in close proximity to, or is supported, carried or suspended in association with, any such line;

[<sup>F595</sup>“the Electricity Directive” means Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common

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rules for the internal market in electricity and repealing Directive [2003/54/EC](#);

[<sup>F602</sup>“electricity distributor”<sup>F603</sup>... and “electricity supplier” have the meanings given by section 6(9);]

[<sup>F604</sup>“electricity interconnector” has the meaning given by section 4(3E);]

[<sup>F595</sup>“the Electricity Regulation” means Regulation 2009/714/EC of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation 2003/1228/EC [<sup>F605</sup>, as amended by [<sup>F606</sup>the 2013 Amending Regulations];]

[<sup>F595</sup>“electricity undertaking” has the meaning given by section 100;]

[<sup>F595</sup>“exempt distribution system” means a distribution system operated or controlled by a distribution exemption holder who is covered by an exemption granted to it in relation to that system;]

“exemption” means an exemption under section 5 above;

“extension”, in relation to a generating station, has the meaning given by section 36(8) above and “extend” shall be construed accordingly;

“final order” and “provisional order” have the meanings given by section 25(8) above;

[<sup>F607</sup>“generate”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;]

“generating station”, in relation to a generating station wholly or mainly driven by water, includes all structures and works for holding or channelling water for a purpose directly related to the generation of electricity by that station;

[<sup>F608</sup>“high voltage line” means an electric line which—

(a) if it is in Scotland or is a relevant offshore line (as defined in subsection (1A)), is of a nominal voltage of 132 kilovolts or more; and

(b) in any other case, is of a nominal voltage of more than 132 kilovolts,

and “low voltage line” shall be construed accordingly;]

“information” includes accounts, estimates and returns;

“licence” means a licence under section 6 above and “licence holder” shall be construed accordingly;

[<sup>F609</sup>“licensable activity” means an activity which, if carried on without the authority of a licence or exemption, constitutes an offence under section 4(1);]

“line” means any wire, cable, tube, pipe or any other similar thing (including its casing or coating) which is designed or adapted for use in carrying electricity;

[<sup>F610</sup>“nominated electricity market operator” means a person designated under Article 4 or 5 of the CACM Regulation by any competent authority to perform tasks related to single day-ahead or single intraday coupling;]

<sup>F611</sup>

.....

“notice” means notice in writing;

“premises” includes any land, building or structure;

“prescribed”, [<sup>F612</sup>means prescribed by regulations made, unless the context otherwise requires,] by the Secretary of State;

<sup>F613</sup>

.....

<sup>F613</sup>

.....

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[<sup>F614</sup>“providing a smart meter communication service” has the meaning given in section 4(3G) above, and cognate expressions shall be construed accordingly;]

[<sup>F595</sup>“regulated person” has the meaning given by section 25(8);]

“relevant condition” and “relevant requirement” have the meanings given by section 25(8) above;

[<sup>F595</sup>“relevant producer or supplier” has the meaning given by section 100;]

[<sup>F615</sup>“renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004;]

[<sup>F595</sup>“senior officer” means—

- (a) in relation to a company, a director;
- (b) in relation to a partnership, a partner;
- (c) in any other case, a person holding a position equivalent to that of a director or partner;]

[<sup>F616</sup>“special connection agreement” means a special agreement under section 22;]

“supply”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;

[<sup>F595</sup>“supply exemption holder” means a person who—

- (a) is carrying on the activity mentioned in section 4(1)(c); and
- (b) is authorised to do so by an exemption;]

<sup>F613</sup>

[<sup>F617</sup>“transmission”, in relation to electricity, has the meaning given by section 4(4) above;

“transmission system” has the same meaning given by section 4(4) above;]

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday within the meaning of the <sup>M14</sup> Banking and Financial Dealings Act 1971.

[ An electric line is a relevant offshore line for the purposes of the definition in <sup>F618</sup>(1A) subsection (1) of “high voltage line” if—

- (a) it is wholly or partly in an area of GB internal waters, an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964, and
- (b) it is—
  - (i) used to convey electricity to a place in Scotland, or
  - (ii) constructed wholly or mainly for the purpose of conveying, to any other place, electricity generated by a generating station situated in an area mentioned in paragraph (a).

(1AA) In subsection (1A)(a) “GB internal waters” means 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.]

[ In this Part, references to participation, in relation to the transmission of electricity, are <sup>F619</sup>(1B) to be construed in accordance with section 4(3A) and (3B) above [<sup>F620</sup> and section 6F].]

(2) The provision of section 3 of the <sup>M15</sup> Administration of Justice (Scotland) Act 1972 (power of arbiter to state case to Court of Session) shall not apply in relation to any determination under this Part made by an arbiter.]

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### Textual Amendments

- F593** Words in s. 64(1) substituted (24.4.2017) by [The Electricity and Gas \(Internal Markets\) Regulations 2017 \(S.I. 2017/493\)](#), regs. 1(1), **5(2)**
- F594** Words in s. 64(1) repealed (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), **Sch. 23 Pt. 1**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F595** Words in s. 64(1) inserted (10.11.2011) by [The Electricity and Gas \(Internal Markets\) Regulations 2011 \(S.I. 2011/2704\)](#), regs. 1(1), **48**
- F596** S. 64(1): definitions of “authorised distributor” and “distribute” inserted (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F597** S. 64(1): definition of “authorised supplier” inserted (7.11.2000 for specified purposes and otherwise 1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(2)**; S.I. 2000/2974, art. 2, **Sch.** (subject to transitional provisions in arts. 3-12); S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F598** Words in s. 64(1) inserted (24.4.2017) by [The Electricity and Gas \(Internal Markets\) Regulations 2017 \(S.I. 2017/493\)](#), regs. 1(1), **5(3)**
- F599** Words in s. 64(1) inserted (1.4.2014) by [Enterprise and Regulatory Reform Act 2013 \(c. 24\)](#), s. 103(3), **Sch. 6 para. 43**; S.I. 2014/416, art. 2(1)(d) (with Sch.)
- F600** Words in s. 64(1) inserted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 102(4)(a)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**
- F601** S. 64(1): words in definition of “electrical plant” inserted (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(3)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F602** S. 64(1): definitions of “electricity distributor” and “electricity supplier” inserted (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(4)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F603** Words in s. 64(1) omitted (6.4.2014) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(5)(c), **Sch. 1 para. 6**
- F604** Words in s. 64(1) inserted (1.12.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 147(7)**, 198(2); S.I. 2004/2575, art. 2(2), **Sch. 2**
- F605** Words in s. 64(1) inserted (14.1.2015) by [The Electricity and Gas \(Internal Markets\) Regulations 2014 \(S.I. 2014/3332\)](#), regs. 1(1), **5(b)**
- F606** Words in s. 64(1) substituted (24.4.2017) by [The Electricity and Gas \(Internal Markets\) Regulations 2017 \(S.I. 2017/493\)](#), regs. 1(1), **5(4)**
- F607** Words in s. 64(1) inserted (1.3.2005 for specified purposes, 29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 89(4)**, 198(2); S.I. 2005/442, art. 2(1), **Sch. 1**; S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
- F608** Words in s. 64(1) substituted (29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by [Energy Act 2004 \(c. 20\)](#), **ss. 180(1)**, 198(2); S.I. 2010/1889, art. 2; S.I. 2014/1460, art. 2
- F609** S. 64(1): definition of “licensable activity” inserted (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(5)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F610** Words in s. 64(1) inserted (24.4.2017) by [The Electricity and Gas \(Internal Markets\) Regulations 2017 \(S.I. 2017/493\)](#), regs. 1(1), **5(5)**
- F611** S. 64(1): definition of “Monopolies Commission” repealed (1.4.1999) by S.I. 1999/506, **art. 24(c)**
- F612** S. 64(1): words in definition of “prescribed” substituted (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(6)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F613** S. 64(1): definitions of “private electricity supplier”, “public electricity supplier” and “tariff customer” repealed (1.10.2001) by [2000 c. 27](#), s. 108, **Sch. 6 Pt. II para. 38(8)**, **Sch. 8**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F614** Words in s. 64(1) inserted (19.9.2012) by [The Electricity and Gas \(Smart Meters Licensable Activity\) Order 2012 \(S.I. 2012/2400\)](#), arts. 1, **13**
- F615** Words in s. 64(1) inserted (5.10.2004) by [Energy Act 2004 \(c. 20\)](#), **ss. 102(4)(b)**, 198(2); S.I. 2004/2575, art. 2(1), **Sch. 1**

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- F616** S. 64(1): definition of “special connection agreement” inserted (1.10.2001) by 2000 c. 27, s. 108, **Sch. 6 Pt. II para. 38(7)**; S.I. 2001/3266, art. 2, **Sch.** (subject to transitional provisions in arts. 3-20)
- F617** Words in s. 64(1) substituted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 15(2)**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F618** S. 64(1A)(1AA) inserted (29.7.2010 for specified purposes, 10.6.2014 in so far as not already in force) by Energy Act 2008 (c. 32), **ss. 44(3)**, 110(2); S.I. 2010/1888, art. 2(1); S.I. 2014/1461, art. 2(a)
- F619** S. 64(1B) inserted (1.9.2004) by Energy Act 2004 (c. 20), s. 198(2), **Sch. 19 para. 15(3)**; S.I. 2004/2184, art. 2(2), **Sch. 2**
- F620** Words in s. 64(1B) inserted (18.2.2014) by Energy Act 2013 (c. 32), **ss. 147(4)**, 156(2)

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

- C100** S. 64: definitions applied by Heathrow Express Railway Act 1991 (c. vii), **s. 37(1)(a)**

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**Marginal Citations**

- M12** 1973 c. 41.  
**M13** 1980 c. 21.  
**M14** 1971 c. 80.  
**M15** 1972 c. 59

**Status:**

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