



# Electricity Act 1989

## 1989 CHAPTER 29

### PART I

#### ELECTRICITY SUPPLY

##### *Protection of public interest*

#### [<sup>F1</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.

*Status: Point in time view as at 01/04/2019.*

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(7) Subsection (6) is subject to sections 32A to 32M.

#### Textual Amendments

**F1** 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)

### 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.

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- (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.
- (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

- F1** 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—

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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, 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—
- (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—

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- (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
    - (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

**F1** 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,

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- (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 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.

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## 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.
- (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, [<sup>F2</sup>an EU] obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
  - (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.

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- (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.

#### Textual Amendments

- F1** 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](#))
- F2** 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\(4\)\(5\)](#))

### 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.



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- (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;
- 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

- F1** 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>F3</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

- F1** 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)
- F3** 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)**

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### **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.
- (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.

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- (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.
- (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;

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“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.

#### Textual Amendments

- F1** 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

- F1** 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

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authority in connection with the performance of its functions conferred by or under Articles 52 to [F455F] 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.

#### Textual Amendments

- F1** 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)
- F4** 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.

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#### Textual Amendments

**F1** 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—
- (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>F5</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

**F1** 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)

**F5** 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>F6</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.

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- (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.]

#### Textual Amendments

- F1** 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)
- F6** 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>F7</sup> 32LA Renewables obligation closure order

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

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#### Textual Amendments

F7 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,
  - (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

F7 Ss. 32LA, 32LB inserted (E.W.S.) (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), [ss. 55\(1\)](#), 156(3)

### [<sup>F8</sup>32LC 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.



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- (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**

**F8** S. 32LC inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 79(1), 84(1)**

**[<sup>F9</sup>32LD 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**

**F9** 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**

**F9** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 80(2), 84(1)**

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

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**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,
  - (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**

**F9** 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**

**F9** 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—

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

**Textual Amendments**

**F9** 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**

**F9** 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.

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

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- (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
    - (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.

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- (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.
- (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

**F9** 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.

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- (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 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

**F9** 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—

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- (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—
    - (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

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

#### Textual Amendments

**F9** Ss. 32LD-32LL inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. 80(2), 84(1)

### [<sup>F10</sup>32LM] 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.



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- (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

**F10** S. 32LM inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), ss. **81(2)**, 84(1)

#### [<sup>F1</sup>32M Interpretation of sections 32 to 32M

- (1) In this section and sections 32 to [<sup>F11</sup>32LM]—

[<sup>F12</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>F12</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>F13</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>F12</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>F13</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>F12</sup>“generating station developer”, in relation to an onshore wind generating station or additional capacity, means—

- (a) the operator of the station, or

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

[<sup>F12</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>F12</sup>“licensed network operator” means a distribution licence holder or a transmission licence holder;]

[<sup>F12</sup>“network operator” means a distribution exemption holder, a distribution licence holder or a transmission licence holder;]

“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>F12</sup>“the onshore wind closure date” has the meaning given by section 32LC(3);]

[<sup>F12</sup>“onshore wind generating station” has the meaning given by section 32LC(3);]

[<sup>F12</sup>“original capacity”, in relation to an onshore wind generating station, means the generating capacity of the station as accredited;]

[<sup>F12</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>F12</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);

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“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>F14</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>F15</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—
  - (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

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- (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 <sup>F16</sup>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

- F1** 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)
- F11** Word in [s. 32M\(1\)](#) substituted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 81(3)(a)**, 84(1)
- F12** Words in [s. 32M](#) inserted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 80(3)(b)**, 84(1)
- F13** [S. 32M\(1\)](#) words inserted (1.4.2011) by [The Renewables Obligation \(Amendment\) Order 2011 \(S.I. 2011/984\)](#), arts. 1(1), 2
- F14** Words in [s. 32M\(1\)](#) inserted (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 55(2)(b)**, 156(3)
- F15** Words in [s. 32M\(1\)](#) inserted (18.12.2013) by [Energy Act 2013 \(c. 32\)](#), **ss. 55(2)(c)**, 156(3)
- F16** Word in [s. 32M\(7\)](#) substituted (12.5.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 81(3)(b)**, 84(1)

#### <sup>F17</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.

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- (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

F17 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—
  - (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);

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- (i) provide for how the relevant purchasing body is to determine whether specified conditions are met;
  - (j) provide that the certificate purchase obligation in relation to a certificate is to be discharged by such a deadline as may be specified or determined in accordance with the order;
  - (k) authorise the relevant purchasing body to determine the manner in which payments under the certificate purchase obligation are to be made;
  - (l) authorise the relevant purchasing body to deduct from payments specified descriptions of fees or charges incurred in making the payments;
  - (m) provide for a certificate purchase levy (see section 32P);
  - (n) authorise the Secretary of State to make payments for the purpose of enabling the certificate purchase obligation to be discharged;
  - (o) impose such other obligations, or confer such other functions, on the relevant purchasing body as the Secretary of State considers appropriate.
- (3) Once the redemption value in relation to a certificate is paid (less any deductions permitted under the order by virtue of subsection (2)(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

F17 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.

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- (4) The order may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The order may provide for amounts of the levy received in respect of any period to be applied for the purpose of discharging the certificate purchase obligation in another period.
- (6) The order may, in particular, make provision about any of the following matters—
  - (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) the rates or amounts of the levy, or how such rates or amounts are to be determined;
  - (e) payment of the levy, including deadlines for payment in respect of each period and interest in respect of late payment;
  - (f) administration of the levy;
  - (g) audit of information (whether by the administrator of the levy or a third party) including requirements for audits to be paid by the person whose information is subject to the audit;
  - (h) provision of information, including its provision to third parties in specified circumstances;
  - (i) enforcement of the levy;
  - (j) insolvency of persons liable to pay the levy;
  - (k) reviews and appeals;
  - (l) the functions of the administrator in connection with the levy.
- (7) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Great Britain, is—
  - (a) the Authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (8) The administrator of the levy, in the case of persons who make, or are expected to make, supplies of electricity in Northern Ireland, is—
  - (a) the Northern Ireland authority, or
  - (b) such other eligible person as may be designated by the order as the administrator in the case of such persons.
- (9) A person is an “eligible person” for the purposes of designation under subsection (7)
  - (b) if the person is—
    - (a) a CFD counterparty at the time when the designation is made, or
    - (b) the Secretary of State.
- (10) A person is an “eligible person” for the purposes of designation under subsection (8)
  - (b) if the person is—
    - (a) a CFD counterparty at the time when the designation is made, or
    - (b) the Northern Ireland department.
- (11) In a case where a person liable to pay the levy has made any overpayment or underpayment (whether arising because an estimate turns out to be wrong or otherwise), provision under subsection (6)(e) may require the amount of the

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overpayment or underpayment (including interest) to be set off against, or added to, any subsequent liability of the person to pay the levy.

- (12) In a case where the amount received in respect of levy payments for a period falls short of the amount due for that period, provision under subsection (6)(e) or (j) may include a requirement on persons liable to pay the levy to make further payments, by the time and in the circumstances specified, of an amount calculated in the manner specified or determined in accordance with the order.
- (13) Provision under subsection (6)(h) may provide for the administrator to determine the form in which any information that a person is required to give is to be given and the time by which it is to be given.
- (14) Provision under subsection (6)(i) may—
- (a) if the Authority is the administrator, apply sections 25 to 28 in relation to a requirement in respect of the levy imposed under the order on a person who is not a licence holder as if the person were a licence holder;
  - (b) in any other case, include provision for the imposition of penalties if a requirement in respect of the levy is breached (whether financial or not, but not including the creation of criminal offences).

#### Textual Amendments

F17 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—



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- (a) into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Authority,
    - (ii) by the Secretary of State, or
    - (iii) by a relevant designated person,in connection with the performance of functions conferred by or under sections 32N to 32Z2;
  - (b) into the Consolidated Fund of Northern Ireland in respect of costs (or a proportion of costs) which have been or are expected to be incurred—
    - (i) by the Northern Ireland authority, or
    - (ii) by the Northern Ireland department,in connection with the performance of functions conferred by or under sections 32N to 32Z2.
- (7) For the purposes of subsection (6)(a), “relevant designated person” means a person who is designated—
- (a) as the purchasing body of GB certificates by virtue of being an eligible person within section 32N(6)(a) (CFD counterparty);
  - (b) as the purchasing body of NI certificates by virtue of being an eligible person within section 32N(7) (CFD counterparty);
  - (c) as an administrator of the levy by virtue of being an eligible person within section 32P(9)(a) or (10)(a) (CFD counterparty).
- (8) The order—
- (a) may exclude amounts of a specified description from being used as mentioned in subsection (6);
  - (b) may prevent the administrator using amounts to make payments in respect of costs of a specified description.
- (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

F17 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

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

#### Textual Amendments

F17 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

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- (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (5) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that the generating station in question is not in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (6) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been supplied by an electricity supplier to customers in Great Britain.
- (7) The matters within this subsection are—
  - (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station in Northern Ireland, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (8) The matters within this subsection are—
  - (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) The matters within this subsection are—
  - (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—

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- (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

**F17** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

### 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—

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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 in Northern Ireland specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (7) The matters within this subsection are—
- (a) that two or more generating stations in Northern Ireland have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) For the purposes of subsections (6) and (7), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (9), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (9) Those ways are—
- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Northern Ireland through a private wire network;
  - (c) being provided to a distribution system located in Northern Ireland, or to transmission system located in Northern Ireland, in circumstances in which its supply to customers in Northern Ireland cannot be demonstrated;
  - (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**

**F17** 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

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- (b) that certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
    - (a) electricity generated using specified descriptions of renewable sources,
    - (b) electricity generated by specified descriptions of generating station, or
    - (c) electricity generated in specified ways.
  - (3) Provision made by virtue of subsection (1)(b) may include—
    - (a) provision about how the proportion is to be determined;
    - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
    - (c) provision authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
      - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority, and
      - (ii) for the results of that analysis to be made available to the relevant authority.
  - (4) In the case of electricity generated by a generating station fuelled or driven—
    - (a) partly by renewable sources, and
    - (b) partly by fossil fuel (other than waste which constitutes a renewable source),
 only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
  - (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

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- (b) require the revocation of such a certificate if the Northern Ireland authority so notifies the Authority at a time between the issue of the certificate and its presentation for payment for the purposes of the certificate purchase obligation.
- (10) A certificate purchase order may make provision requiring a person to whom a certificate is issued to pay to the relevant authority an amount equal to any amount that has been paid in respect of the certificate under the certificate purchase obligation if it appears to the authority that—
  - (a) the certificate should not have been issued to that person, and
  - (b) it is not possible to secure the recovery of such an amount by refusing to issue another certificate to the person.
- (11) Provision under subsection (10) may include provision about enforcement and appeals.
- (12) The Authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund.
- (13) The Northern Ireland authority must pay any amounts it receives by virtue of subsection (10) into the Consolidated Fund of Northern Ireland.

#### **Textual Amendments**

**F17** 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;

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- (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of certificate issued by the relevant authority, and the impact this will have on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, an EU obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
- (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the Secretary of State, no subsequent order containing such provision may be made by the Secretary of State except following a review held by virtue of subsection (8).
- (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

F17 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.



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- (4) Section 32V(4) and (7) do not apply in relation to provision of the kind mentioned in subsection (2) or (3) above.
- (5) Subsection (7) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (6) The requirements specified under subsection (5)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (7) A certificate purchase order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the person who made the grant (“the payer”) the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the payer interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined in accordance with the order (which may confer the function of making the determination on a person), and
  - (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**

**F17** 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

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

F17 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

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- (b) exercising the power in that way is not inconsistent with other duties or requirements of the Secretary of State (whether arising under this Act or another enactment, by virtue of any EU obligation or otherwise).
- (4) In the Table—
- (a) a “listed power” is any power specified in the first column;
- (b) the “equivalent GB power”, in relation to a listed power, is the power specified in the corresponding entry in the second column;
- (c) the “equivalent NI power”, in relation to a listed power, is the power specified in the corresponding entry in the third column, and in that column references to an Article are to an Article of the 2003 NI Order.

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

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“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

F17 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—
  - (a) make further provision as to the functions of the relevant authority in relation to 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 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),

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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

**F17** 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,
  - (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

**F17** Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), **ss. 56(2)**, 156(2)

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### **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;

“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;

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

- (3) For the purposes of the definition of “renewable sources”, a certificate purchase order may make provision—
- (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the relevant authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the relevant authority;
    - (ii) for the results of that analysis to be made available to the relevant authority.
- (4) In the application of the relevant sections to Northern Ireland, “fossil fuel” includes peat.
- (5) In the relevant sections “Northern Ireland” does not include any part of the territorial sea of the United Kingdom, but this is subject to subsection (6).
- (6) A certificate purchase order may provide that “Northern Ireland” includes the territorial sea adjacent to Northern Ireland.
- (7) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
- (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**

F17 Ss. 32N-32Z2 inserted (18.2.2014) by [Energy Act 2013 \(c. 32\)](#), [ss. 56\(2\)](#), [156\(2\)](#)

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### Textual Amendments

**F18** 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)

- C1** 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)
- C2** 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))
- C3** 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

## 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>MI</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—



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- (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)**

- C4** S. 34: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 2, [Sch. 1](#) (with art. 7)
- C5** 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**

- M1** 1974 c. 40.

**35 Provisions supplementary to section 34.**

- (1) The Secretary of State may give a direction requiring [<sup>F19</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>F20</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>F21</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.

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- (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>M2</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

- F19** 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](#)
- F20** 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](#)
- F21** 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)

- C6** 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

- M2** [1976 c. 76.](#)

### 36 Consent required for construction etc. of generating stations.

- (1) Subject to subsections [<sup>F22</sup>(1A) to] (2) and (4) below, a generating station shall not be constructed [<sup>F23</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>F24</sup>appropriate authority].
- [<sup>F25</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>F26</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>F27</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

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- (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>F28</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>F29</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>F30</sup>otherwise than in Wales];
  - [<sup>F31</sup>(c) in the case of a generating station 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.
- (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>F32</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>F33</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>F34</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>F35</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>F36</sup>(a) the Welsh Ministers, if they are the appropriate authority, or

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- (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>F37</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.
- (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>F38</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>F39</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

- F22** 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)
- F23** 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](#)
- F24** 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)

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- F25** 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)
- F26** 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))
- F27** 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)
- F28** 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)
- F29** 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)
- F30** 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)
- F31** 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)
- F32** 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)
- F33** 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)**
- F34** 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)
- F35** 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)**
- F36** 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)
- F37** 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)
- F38** 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
- F39** 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)

- C7** S. 36 restricted by S.I. 1990/442, art. 3(1)(a)
- C8** 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))
- C9** S. 36: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, art. 2, **Sch. 1** (with art. 7)
- C10** S. 36 restricted (21.11.2003) by The Norfolk Offshore Wind Farm Order 2003 (S.I. 2003/2830), arts. 1, **16** (with art. 23)
- C11** S. 36 excluded (16.4.2004) by The Gunfleet Sands Offshore Wind Farm Order 2004 (S.I. 2004/933), arts. 1, **16**
- C12** 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)
- C13** 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)

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- C14** 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)
- C15** 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))
- C16** 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)
- C17** S. 36(2) modified (S.) by [S.I. 1990/392](#), **art. 2**
- C18** S. 36(2) modified (E.W.) (1.12.2001) by [S.I. 2001/3642](#), **art. 2**
- C19** 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**
- C20** 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))
- C21** 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))

### [<sup>F40</sup>**36A** Declarations extinguishing etc. public rights of navigation

- (1) Where a consent is granted by [<sup>F41</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>F42</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>F43</sup>(1A) (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

- (2) [<sup>F44</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—

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- (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>F45</sup>the appropriate authority], or a determination is made by [<sup>F46</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>F46</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.
- (7) In this section—
- [<sup>F47</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

- F40** 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
- F41** 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)
- F42** 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)
- F43** 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))
- F44** 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)
- F45** 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)
- F46** 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)
- F47** 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)

- C22** 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))
- C23** 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

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### 36B Duties in relation to navigation

- (1) [<sup>F48</sup>The appropriate authority may not] grant a consent in relation to any particular offshore generating activities if [<sup>F49</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>F50</sup>(1A) (which transfers certain functions of the Secretary of State to the Marine Management Organisation).]

- (2) It shall be the duty [<sup>F51</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,
- 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>F52</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>F53</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—



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- (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.]

#### Textual Amendments

- F40** 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](#)
- F48** 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\(a\)](#)
- F49** 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\(a\)](#)
- F50** 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\(1\)](#))
- F51** 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\(a\)](#)
- F52** 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\(a\)](#)
- F53** 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)

- C24** 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>F54</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.

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- (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).
- [ Regulations may provide that, where the Welsh Ministers are the appropriate authority,  
<sup>F55</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>F56</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>F57</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>F58</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>F59</sup>and an Act of the Assembly].
- [<sup>F60</sup>“Welsh waters” has the meaning given in section 36.]]

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### Textual Amendments

- F54** 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
- F55** 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)
- F56** 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)
- F57** 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)
- F58** 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)
- F59** 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)
- F60** 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>F61</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.

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(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

**F61** 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))

### 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

**F61** 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>F62</sup>subsections (1A) to [<sup>F63</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>F64</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;

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- (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>F65</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
- (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

- F62** 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)
- F63** 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)
- F64** 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)
- F65** 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)

- C25** S. 37 restricted by [S.I. 1990/442](#), **art. 3(1)(b)**
- C26** S. 37 excluded (16.3.1992) by [Midland Metro Act 1992 \(c. vii\)](#), s. 10(3)
- C27** S. 37 modified (S.) (27.5.1997) by [1997 c. 8](#), **ss. 57(2)**, 278(2) (with ss. 64, 219)
- C28** S. 37: transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), art. 2, **Sch. 1** (with art. 7)
- C29** 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)
- C30** S. 37(1) excluded (1.1.1993) by [S.I. 1992/3074](#), **reg.3**
- C31** S. 37(1) excluded (18.12.1996) by [1996 c. 61](#), s. 50(1)

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

*Changes to legislation: Electricity Act 1989, Cross Heading: Protection of public interest 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)*

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- C32** S. 37(1) excluded (22.7.2008) by Crossrail Act 2008 (c. 18), s. 4(1)
- C33** 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
- C34** 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))
- C35** 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.

**Status:**

Point in time view as at 01/04/2019.

**Changes to legislation:**

Electricity Act 1989, Cross Heading: Protection of public interest 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.