



Electricity Act 1989

1989 CHAPTER 29

PART I

ELECTRICITY SUPPLY

Protection of public interest

32 Electricity from non-fossil fuel sources

- (1) The Secretary of State may, after consultation with the Director and with the suppliers concerned, by order require each public electricity supplier in England and Wales or each such supplier in Scotland, before a day specified in the order, to make (in so far as he has not already done so) and produce evidence to the Director showing that he has made—
- (a) such arrangements; or
 - (b) where a previous order under this subsection has had effect in relation to him, such additional arrangements,
- as will secure the result mentioned in subsection (2) below.
- (2) The result referred to in subsection (1) above is that, for a period specified in the order, there will be available to the public electricity supplier—
- (a) from non-fossil fuel generating stations; or
 - (b) if the order so provides, from non-fossil fuel generating stations of any particular description,
- an aggregate amount of generating capacity which is not less than that specified in relation to him in the order; and an order under subsection (1) above may make different provision for different suppliers.
- (3) A public electricity supplier who—
- (a) fails to comply with an order under subsection (1) above; or
 - (b) having complied with such an order, by any act or omission of his prevents the arrangements made by him from securing the result mentioned in subsection (2) above,

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shall be liable on conviction on indictment to a fine.

(4) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.

(5) Subject to subsection (6) below, if throughout any period a public electricity supplier—

(a) is entitled under a contract to purchase, at any wattage specified in the contract, electricity generated by a particular non-fossil fuel generating station; or

(b) himself operates a non-fossil fuel generating station and, of the station's capacity, any wattage does not fall to be regarded, by virtue of paragraph (a) above, as available to any other person,

a generating capacity of that wattage shall be regarded for the purposes of this section as available to that supplier from that station for that period.

(6) The amount of a non-fossil fuel generating station's capacity which may be regarded as available for the purposes of this section shall not exceed that station's declared net capacity; and where different parts of such a station's capacity fall to be regarded as available to different persons, any excess over that station's declared net capacity shall be apportioned between those persons in such manner as the Director may determine.

(7) If the Secretary of State is satisfied that any such arrangements as are mentioned in subsection (1) above have been made before the day specified in the first order under that subsection, he may certify that those arrangements—

(a) have been made by such one or more public electricity suppliers as are specified in the certificate; and

(b) are such as will secure such a result as is so specified;

and a certificate under this subsection shall be conclusive evidence of the matters stated in it.

(8) In this section—

“coal products” means any substances produced directly or indirectly from coal;

“declared net capacity”, in relation to a non-fossil fuel generating station, means the highest generation of electricity (at the main alternator terminals) which can be maintained indefinitely without causing damage to the plant less—

(a) so much of that capacity as is consumed by the plant; and

(b) in the case of a station which is capable of being fuelled by a fossil fuel, so much of that capacity as the Director may determine;

“fossil fuel” means coal, coal products, lignite, natural gas, crude liquid petroleum or petroleum products;

“natural gas” and “petroleum products” have the same meanings as in the Energy Act 1976;

“non-fossil fuel generating station” means a generating station which is (or may be) fuelled or driven otherwise than by a fossil fuel;

and for the purposes of this section a public electricity supplier shall be regarded as such a supplier in England and Wales or such a supplier in Scotland, according as his authorised area falls wholly or mainly in England and Wales or wholly or mainly in Scotland.

(9) The Secretary of State may by regulations provide—

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- (a) that subsections (5) to (8) above shall have effect in relation to any non-fossil fuel generating station which is driven by water, wind or solar power with such modifications as may be prescribed; and
 - (b) that electricity generated outside the United Kingdom shall be treated for the purposes of subsection (5)(a) above as generated by a non-fossil fuel generating station in such circumstances and to such extent as may be prescribed.
- (10) In relation to any time before the commencement of section 4 above, any requirement imposed by subsection (1) above to consult with public electricity suppliers in England and Wales or public electricity suppliers in Scotland shall be construed as a requirement to consult with the Area Boards or, as the case may be, the Scottish Boards.

33 Fossil fuel levy

- (1) Where the Secretary of State has made one or more orders under section 32 above in relation to public electricity suppliers in England and Wales, or public electricity suppliers in Scotland, he may by regulations provide—
- (a) for the imposition on such suppliers, and on persons authorised by a licence under section 6(2) above to supply electricity within the authorised area of such a supplier, of a levy in respect of each qualifying month;
 - (b) for the collection of payments in respect of that levy by a prescribed person; and
 - (c) for the making by that person to such suppliers, out of the payments so collected, of payments in respect of each qualifying month.
- (2) The amount of any payment which is required by regulations under this section to be made by any person in respect of the levy shall be calculated, by such method as may be specified by the regulations, by reference to the aggregate amount charged by that person for leviable electricity supplied by him during the qualifying month.
- (3) The amount of any payment required to be made to a public electricity supplier by regulations under this section shall be the aggregate of the amounts given by subsections (4) and (5) below.
- (4) The amount given by this subsection is a one-twelfth part of any advance payments which, in pursuance of qualifying arrangements, fall to be made by the public electricity supplier during the relevant year; and in this subsection “the relevant year” means whichever one of the following periods the qualifying month falls within, namely—
- (a) the period of twelve months beginning on the day appointed by the first order under section 32 above which has effect in relation to the supplier; and
 - (b) each successive period of twelve months.
- (5) The amount given by this subsection is the difference between—
- (a) the total cost to the supplier of purchasing or generating any electricity supplied by him during the qualifying month which was generated in pursuance of qualifying arrangements; and
 - (b) what would have been the total cost to him of purchasing or generating that electricity if it had been generated by a fossil fuel generating station,
- calculated (in each case) by such method as may be specified by regulations under this section and including any advance or deferred payments other than, in the case

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of the cost mentioned in paragraph (a) above, payments taken into account under subsection (4) above.

- (6) Regulations under this section may—
- (a) impose requirements (whether as to the furnishing of records or other information or the affording of facilities for the examination and testing of meters or otherwise) on persons authorised by a licence to supply, transmit or generate electricity;
 - (b) make provision as to the times at which payments falling to be made in pursuance of the regulations (whether payments by way of levy or payments to public electricity suppliers) are to be so made; and
 - (c) require the amount of any overpayment or underpayment which is made by or to any person (whether it arises because an estimate turns out to be wrong or otherwise) to be set off against or added to any subsequent liability or entitlement of that person.
- (7) The Secretary of State shall exercise the powers conferred by this section in the manner which he considers is best calculated to secure that the sums realised by the levy are sufficient (after payment of the administrative expenses of the prescribed person) to pay to each public electricity supplier in respect of each qualifying month the payment required to be made to him by the regulations.

- (8) In this section—

“advance payment” means any payment made or expense incurred in relation to a particular generating station before electricity is first generated by that station, and any reference to the making of advance payments shall be construed accordingly;

“deferred payment” means any payment made or expense incurred in relation to a particular generating station after electricity ceases to be generated by that station;

“fossil fuel generating station” means a generating station fuelled by a fossil fuel;

“leviable electricity” means electricity which—

- (a) is generated by a fossil fuel generating station; or
- (b) is generated by a non-fossil fuel generating station in pursuance of qualifying arrangements;

“non-fossil fuel generating station” means a generating station fuelled or driven otherwise than by a fossil fuel;

“qualifying arrangements” in relation to a public electricity supplier, means any arrangements evidence of the making of which he has produced to the Director in pursuance of an order under section 32 above and which—

- (a) were made jointly with one or more other public electricity suppliers; and
- (b) satisfy such other requirements as may be prescribed;

“qualifying month” in relation to a public electricity supplier or a person authorised by a licence under section 6(2) above to supply electricity within the authorised area of such a supplier, means a month beginning on or after the day appointed by the first order under section 32 above which has effect in relation to that supplier;

and other expressions which are used in section 32 above have the same meanings as in that section.

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 Control of Pollution Act 1974.
- (2) The Secretary of State may by order provide that subsection (1) above shall have effect as if for the capacity mentioned in paragraph (a) there were substituted such other capacity (not exceeding 100 megawatts) as may be specified in the order.
- (3) In respect of any generating station to which this section applies, the Secretary of State may give a direction requiring the person who operates it—
 - (a) to make such arrangements with respect to stocks of fuel and other materials held at or near that generating station for the purposes of its operation as will—
 - (i) enable those stocks to be brought within a specified time to, and thereafter maintained at, a specified level; and
 - (ii) ensure that they do not fall below that level, except as may be permitted by the terms of the direction or by a direction under subsection (4) below;
 - (b) to create such stocks and make such arrangements with respect to them;and the amount of any stocks may be specified by reference to the period for which it would enable the generating station to be maintained in operation.
- (4) In respect of any generating station to which this section applies, the Secretary of State may give a direction—
 - (a) authorising or requiring the person who operates it to make such use as may be specified of any stocks held at or near that generating station; and
 - (b) requiring that person to operate, or not to operate, that generating station for specified periods, at specified levels of capacity or using specified fuels.
- (5) In subsections (3) and (4) above “specified” means specified by or under the Secretary of State’s direction; and a direction may—
 - (a) specify the cases and circumstances in which any stocks are to be treated as held at or near any generating station;
 - (b) specify the extent to which the direction may be treated as complied with where, under arrangements made or approved by the Secretary of State, access can be had to stocks held for the use of a number of consumers;
 - (c) specify the manner in which any period mentioned in subsection (3) or (4) above is to be determined;
 - (d) require anything falling to be specified under the direction to be specified by such persons and by reference to such matters as may be specified.
- (6) A direction under subsection (3) or (4) above which confers on any person the function of specifying anything falling to be specified under the direction may require that person to exercise that function in such manner as may be specified by the direction.

35 Provisions supplementary to section 34

- (1) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to give to the Secretary of State, after consultation

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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.

- (2) The Secretary of State may give a direction requiring any person authorised by a licence to transmit electricity to operate his transmission system, 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; and a person authorised by a licence to transmit electricity shall give effect to any direction given to him under subsection (2) above notwithstanding any other duty imposed on him by or under this Part.
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under section 34 above or this section unless he is of the opinion that disclosure of the direction is against the interests of national security or the commercial interests of any person.
- (5) A person who, without reasonable excuse, contravenes or fails to comply with a direction of the Secretary of State under section 34 above or this section shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine.
- (6) No proceedings shall be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State.
- (7) Paragraphs 1 to 4, 7 and 8 of Schedule 2 to the 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.

36 Consent required for construction etc. of generating stations

- (1) Subject to subsections (2) and (4) below, a generating station shall not be constructed, extended or operated except in accordance with a consent granted by the Secretary of State.
- (2) Subsection (1) above shall not apply to a generating station whose capacity—
 - (a) does not exceed the permitted capacity, that is to say, 50 megawatts; and
 - (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;
 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 Secretary of State 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) 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 Secretary of State to be appropriate; and
 - (b) shall continue in force for such period as may be specified in or determined by or under the consent.
- (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 the Secretary of State.
- (8) The provisions of Schedule 8 to this Act (which relate to consents under this section and section 37 below) shall have effect.
- (9) In this Part “extension”, in relation to a generating station, includes the use by the person operating the station of any land (wherever situated) for a purpose directly related to the generation of electricity by that station and “extend” shall be construed accordingly.

37 Consent required for overhead lines

- (1) Subject to subsection (2) 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.
- (2) Subsection (1) above shall not apply—
 - (a) in relation to an electric line which has a nominal voltage not exceeding 20 kilovolts and is used or intended to be used for supplying a single consumer;
 - (b) in relation to so much of an electric line as is or will be within premises in the occupation or control of the person responsible for its installation; or
 - (c) in such other cases as may be prescribed.
- (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.

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- (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.

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.