



# Energy Act 2004

## 2004 CHAPTER 20

### PART 2

#### SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

#### CHAPTER 1

#### SUSTAINABLE ENERGY

### **81 Reports under section 1 of Sustainable Energy Act 2003**

(1) Section 1 of the Sustainable Energy Act 2003 (c. 30) (annual reports on progress towards sustainable energy aims) is amended as follows.

(2) After subsection (1) insert—

“(1A) The report must include, in particular, all such information as the Secretary of State considers appropriate about—

- (a) things done during the reporting period for the purposes of the development or the bringing into use of any of the energy sources or technologies mentioned in subsection (1B);
- (b) things done during that period for the purpose of ensuring the maintenance of the scientific and engineering expertise available in the United Kingdom that is necessary for the development of potential energy sources (including sources of nuclear energy); and
- (c) things done during that period for the purpose of achieving the energy efficiency aims designated under sections 2 and 3.

(1B) The energy sources and technologies referred to in subsection (1A)(a) are—

- (a) clean coal technology;
- (b) coal mine methane;
- (c) biomass;
- (d) biofuels;

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- (e) fuel cells;
- (f) photovoltaics;
- (g) wave and tidal generation;
- (h) hydrogeneration;
- (i) microgeneration;
- (j) geothermal sources; and
- (k) other sources of energy, and technologies for the production of energy, the use of which would, in the opinion of the Secretary of State, cut the United Kingdom’s carbon emissions.

(1C) The references in subsection (1A) to things done during the reporting period include references to proposals of the Secretary of State published during that period.”

(3) In subsection (2) for “subsection (1)” substitute “ subsections (1) to (1C) ”.

**Commencement Information**

**II** S. 81 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**82 Microgeneration**

- (1) The Secretary of State—
  - (a) must prepare a strategy for the promotion of microgeneration in Great Britain; and
  - (b) may from time to time revise it.
- (2) The Secretary of State—
  - (a) must publish the strategy within 18 months after the commencement of this section; and
  - (b) if he revises it, must publish the revised strategy.
- (3) In preparing or revising the strategy, the Secretary of State must consider the contribution that is capable of being made by microgeneration to—
  - (a) cutting emissions of greenhouse gases in Great Britain;
  - (b) reducing the number of people living in fuel poverty in Great Britain;
  - (c) reducing the demands on transmission systems and distribution systems situated in Great Britain;
  - (d) reducing the need for those systems to be modified;
  - (e) enhancing the availability of electricity and heat for consumers in Great Britain.
- (4) Before preparing or revising the strategy, the Secretary of State must consult such persons appearing to him to represent the producers and suppliers of plant used for microgeneration, and such other persons, as he considers appropriate.
- (5) The Secretary of State must take reasonable steps to secure the implementation of the strategy in the form in which it has most recently been published.
- (6) For the purposes of this section “microgeneration” means the use for the generation of electricity or the production of heat of any plant—

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- (a) which in generating electricity or (as the case may be) producing heat, relies wholly or mainly on a source of energy or a technology mentioned in subsection (7); and
  - (b) the capacity of which to generate electricity or (as the case may be) to produce heat does not exceed the capacity mentioned in subsection (8).
- (7) Those sources of energy and technologies are—
- (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) photovoltaics;
  - (e) water (including waves and tides);
  - (f) wind;
  - (g) solar power;
  - (h) geothermal sources;
  - (i) combined heat and power systems;
  - (j) other sources of energy and technologies for the generation of electricity or the production of heat, the use of which would, in the opinion of the Secretary of State, cut emissions of greenhouse gases in Great Britain.
- (8) That capacity is—
- (a) in relation to the generation of electricity, 50 kilowatts;
  - (b) in relation to the production of heat, 45 kilowatts thermal.
- (9) In this section—
- “consumers” includes both existing and future consumers;
  - “distribution system” and “transmission system” have the same meanings as in Part 1 of the 1989 Act;
  - “fuel poverty” has the same meaning as in section 1 of the Sustainable Energy Act 2003 (c. 30);
  - “greenhouse gases” means—
    - (a) carbon dioxide;
    - (b) methane;
    - (c) nitrous oxide;
    - (d) hydrofluorocarbons;
    - (e) perfluorocarbons;
    - (f) sulphur hexafluoride;
  - “plant” includes any equipment, apparatus or appliance.

#### Commencement Information

**I2** S. 82 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 83 Sustainable development

In each of section 4AA of the Gas Act 1986 (c. 44) and section 3A of the 1989 Act (the principal objective and general duties of the Secretary of State and the Authority), in subsection (5)—

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- (a) for the “and” at the end of paragraph (b) substitute—
  - “(ba) to contribute to the achievement of sustainable development; and”;
- (b) for “and shall” substitute “ and (so far as not otherwise required to do so by this subsection) shall ”.

**Commencement Information**

**I3** S. 83 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## CHAPTER 2

### OFFSHORE PRODUCTION OF ENERGY

#### *Renewable Energy Zones*

#### **84 Exploitation of areas outside the territorial sea for energy production**

- (1) The rights to which this section applies shall have effect as rights belonging to Her Majesty by virtue of this section.
- (2) This section applies to the rights under Part V of the Convention that are exercisable by the United Kingdom in areas outside the territorial sea—
  - (a) with respect to the exploitation of those areas for the production of energy from water or winds;
  - (b) with respect to the exploration of such areas in that connection; or
  - (c) for other purposes connected with such exploitation.
- (3) The other purposes so connected include, in particular, the transmission, distribution and supply of electricity generated in the course of such exploitation.
- (4) Her Majesty may by Order in Council designate an area as an area within which the rights to which this section applies are exercisable (a “Renewable Energy Zone”).
- (5) The Secretary of State may by order designate the whole or a part of a Renewable Energy Zone as an area in relation to which the Scottish Ministers are to have functions.
- (6) Orders in Council under this section, and orders under subsection (5), are subject to the negative resolution procedure.
- (7) In this section—
  - “the Convention” means the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941) and any modifications of that Convention agreed after the passing of this Act that have entered into force in relation to the United Kingdom;
  - “exploration” includes the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the exploitation of an area is, in a particular case, practicable or commercially viable, or both.

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**Commencement Information**

**I4** S. 84 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**85 Application of criminal law to renewable energy installations etc.**

- (1) Her Majesty may by Order in Council provide that acts and omissions which—
  - (a) fall within subsection (2), and
  - (b) would, if they took place in a part of the United Kingdom, constitute an offence under the law in force in that part,are to be treated for the purposes of that law as taking place in that part.
- (2) An act or omission falls within this subsection if it takes place on, under or above—
  - (a) a renewable energy installation situated in waters to which this section applies; or
  - (b) waters to which this section applies that are within a safety zone.
- (3) Her Majesty may by Order in Council provide that a constable is to have—
  - (a) on, under and above a renewable energy installation situated in waters to which this section applies, and
  - (b) on, under and above any waters to which this section applies that are within a safety zone,all the powers and privileges that he has in the area of the force of which he is a member.
- (4) Subsection (3) is in addition to any other enactment or any rule of law or subordinate legislation conferring a power or privilege on constables; and this section is to be disregarded in determining the extent of those other powers and privileges.
- (5) The waters to which this section applies are—
  - (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.
- (6) Proceedings for anything that is an offence by virtue only of an Order in Council under this section may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (7) In this section “subordinate legislation” includes an instrument made under an Act of the Scottish Parliament.

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**Commencement Information**

**I5** S. 85 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**86 Prosecutions**

- (1) Subject to subsection (2), this section applies to an offence alleged to have been committed on, under or above—

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- (a) a renewable energy installation situated in waters to which section 85 applies; or
  - (b) waters to which section 85 applies that, at the time of the alleged offence, were within a safety zone.
- (2) This section does not apply to an offence created by or under—
- (a) the Health and Safety at Work etc. Act 1974 (c. 37);
  - (b) the Customs and Excise Acts 1979, or any enactment that has to be construed as one with those Acts or any of them;
  - (c) the Civil Aviation Act 1982 (c. 16) or any enactment that has to be construed as one with that Act;
  - (d) section 23 of the Petroleum Act 1987 (c. 12);
  - (e) the Pilotage Act 1987 (c. 21);
  - (f) section 4, 29, 35, 36, 37 or 59 of the 1989 Act, or paragraph 3 of Schedule 7 to that Act;
  - (g) the Value Added Tax Act 1994 (c. 23) or any enactment that has to be construed as one with that Act;
  - (h) the Merchant Shipping Act 1995 (c. 21);
  - (i) section 97 of this Act or Chapter 3 of this Part.
- (3) No proceedings for an offence to which this section applies shall be instituted—
- (a) in England and Wales, except by or with the consent of the Director of Public Prosecutions; or
  - (b) in Northern Ireland, except by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (4) Subsection (3) does not require the consent of the Director of Public Prosecutions, or of the Director of Public Prosecutions for Northern Ireland, where the proceedings in question are proceedings for which the consent of the Attorney General, or of the Advocate General for Northern Ireland, is required apart from this section.
- (5) In relation to times before the coming into force of section 27(1) of the Justice (Northern Ireland) Act 2002 (c. 26), the reference in subsection (4) to the Advocate General for Northern Ireland is to be read as a reference to the Attorney General for Northern Ireland.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence to which this section applies.

**Commencement Information**

**16** S. 86 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**87 Application of civil law to renewable energy installations etc.**

- (1) Her Majesty may by Order in Council provide that questions arising out of—
- (a) acts or omissions taking place on, under or above a renewable energy installation situated in waters to which this section applies, or
  - (b) acts or omissions taking place on, under or above such waters in relation to a related line,

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are to be determined in accordance with the law in force in such part of the United Kingdom as may be specified in the Order.

- (2) An Order in Council under this section may also make provision for conferring jurisdiction in proceedings with respect to questions of the kind mentioned in subsection (1) on courts in one or more parts of the United Kingdom.
- (3) Jurisdiction conferred on a court by an Order in Council under this section is in addition to any jurisdiction exercisable apart from that Order by that or any other court; and this section is to be disregarded in determining the extent of any jurisdiction so exercisable.
- (4) The waters to which this section applies are—
  - (a) tidal waters and parts of the sea in or adjacent to Great Britain up to the seaward limits of the territorial sea; and
  - (b) waters in a Renewable Energy Zone.
- (5) In section 410(3) of the Communications Act 2003 (c. 21) (which enables Orders in Council under section 11 of the Petroleum Act 1998 (c. 17) to extend certain communications legislation to offshore installations), after “1998” insert “ or section 87 of the Energy Act 2004 ”.
- (6) In this section—
  - “court” includes any tribunal or regulatory authority;
  - “related line” means an electric line, or a part of an electric line, which—
    - (a) falls within subsection (7); but
    - (b) is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act).
- (7) An electric line, or a part of an electric line, falls within this subsection if it—
  - (a) is used for the conveyance of electricity to or from a renewable energy installation;
  - (b) is in the course of construction at a place where it is to be so used; or
  - (c) has ceased to be so used (whether or not it is being decommissioned) and since ceasing to be so used has not been used for any other purpose.

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**Commencement Information**

**I7** S. 87 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **88 Orders in Council under ss. 85 and 87**

- (1) An Order in Council under section 85 or 87 that makes provision falling within subsection (3) is subject to annulment in pursuance of a resolution of the Scottish Parliament (but may by virtue of subsection (2) be subject also to the negative resolution procedure).
- (2) An Order in Council under section 85 or 87 that makes provision not falling within subsection (3) is subject to the negative resolution procedure.
- (3) Provision falls within this subsection so far as it is provision that would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

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#### Commencement Information

**18** S. 88 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### *Application of 1989 Act offshore*

#### **89 Activities offshore requiring 1989 Act licences**

(1) In subsection (4) of section 4 of the 1989 Act (definitions for the purposes of Part 1), after the definition of “distribute” insert—

““generate”, in relation to electricity, means generate at a relevant place;”.

(2) After that subsection insert—

“(5) In this section—

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

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

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

(3) In section 6 of that Act (licences authorising supply etc.), after subsection (9) insert—

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

(4) In section 64(1) of that Act (interpretation of Part 1), after the definitions of “final order” and “provisional order” insert—

““generate”, in relation to electricity, has the meaning given by section 4(4) above, and cognate expressions shall be construed accordingly;”.

#### Commencement Information

**19** S. 89 in force at 1.3.2005 for specified purposes by S.I. 2005/442, art. 2(1), Sch. 1

VALID FROM 19/06/2009

#### **90 Modification of licence conditions for offshore transmission and distribution**

(1) If the Secretary of State considers it appropriate to do so for purposes connected with offshore transmission or offshore distribution, he may—

(a) modify the standard conditions of transmission licences or distribution licences;

(b) modify, for purposes that in relation to modifications made under paragraph (a) are incidental, consequential or transitional purposes, the conditions of a particular transmission licence or a particular distribution licence;



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- (c) modify a code maintained in accordance with the conditions of a transmission licence or a distribution licence; and
  - (d) modify an agreement that gives effect to a code so maintained.
- (2) Before making a modification under this section, the Secretary of State must consult—
- (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (3) Subsection (2) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (4) The Secretary of State must publish every modification made by him under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) Where the Secretary of State makes modifications under subsection (1)(a) of the standard conditions of licences of any type, GEMA must—
- (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (7) A modification under subsection (1)(b) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (8) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (9) In this section—
- “offshore distribution” means distribution within an area of offshore waters of electricity generated by a generating station in such an area;
  - “offshore transmission” means transmission within an area of offshore waters of electricity generated by a generating station in such an area; and
  - “offshore waters” means—
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964 (c. 29).
- (10) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

VALID FROM 19/06/2009

## 91 Extension of transmission licences offshore

- (1) This section applies where, at the commencement of this section, a transmission licence is in force that authorises a person to co-ordinate and direct the flow of

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electricity onto and over a transmission system by means of which electricity is transmitted within Great Britain, or within an area of Great Britain (the “co-ordination licence”).

- (2) The Secretary of State may make such modifications of the co-ordination licence as he considers appropriate for the purpose of applying the authorisation and conditions of the licence in relation to the transmission of electricity within one or both of the following—
  - (a) an area of the territorial sea adjacent to Great Britain; and
  - (b) an area designated under section 1(7) of the Continental Shelf Act 1964.
- (3) The modifications that may be made by the Secretary of State under subsection (2) include such modifications of the co-ordination licence (including modifications of the conditions included in it) as the Secretary of State considers appropriate for incidental, consequential or transitional purposes.
- (4) Where the Secretary of State considers it appropriate to do so for purposes that in relation to modifications made under subsection (2) are incidental or consequential purposes, he may make—
  - (a) modifications of the conditions of a particular licence (other than the co-ordination licence);
  - (b) modifications of the standard conditions of licences of any type.
- (5) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as he considers appropriate.
- (6) Subsection (5) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (7) The Secretary of State must publish every modification made by him under this section.
- (8) The publication must be in such manner as the Secretary of State considers appropriate.
- (9) A modification under subsection (2) or (4)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1989 Act.
- (10) Where the Secretary of State makes modifications under subsection (4)(b) of the standard conditions of licences of any type, GEMA must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (11) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (12) Expressions used in this section and in Part 1 of the 1989 Act have the same meanings in this section as in that Part.

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VALID FROM 20/05/2009

## 92 Competitive tenders for offshore transmission licences

After section 6B of the 1989 Act (applications for transmission licences) insert—

### “6C Competitive tenders for offshore transmission licences

- (1) The Authority may by regulations make such provision as appears to it to be appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom an offshore transmission licence is to be granted.
- (2) That provision may include—
  - (a) provision, in prescribed cases, for the publication of a proposal to grant an offshore transmission licence;
  - (b) provision for the inclusion in such a proposal of an invitation to apply for such a licence;
  - (c) provision restricting the making of applications for offshore transmission licences and imposing requirements as to the period within which they must be made;
  - (d) provision for regulating the manner in which applications are considered and determined.
- (3) Regulations under this section—
  - (a) may make provision by reference to a determination by the Authority or to the opinion of the Authority as to any matter; and
  - (b) may dispense with or supplement provision made in relation to applications for transmission licences by or under section 6A or 6B above.
- (4) The approval of the Secretary of State is required for the making of regulations under this section.
- (5) In this section—

“offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission; and

“prescribed” means prescribed in or determined under regulations made by the Authority.
- (6) In subsection (5) “offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area.
- (7) In subsection (6) “offshore waters” means—
  - (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964.”

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### 93 Consents for generating stations offshore

- (1) In section 36(1) of the 1989 Act (consent required for construction etc. of generating stations), after “constructed” insert “ at a relevant place (within the meaning of section 4), and a generating station at such a place shall not be ”.
- (2) Before paragraph 8 of Schedule 8 to that Act (procedure for consents under sections 36 and 37) insert—

#### “Generating stations not within areas of relevant planning authorities

- 7A
- (1) This paragraph applies to every case where an application for a consent under section 36 of this Act relates to—
    - (a) the construction or operation of a generating station the whole or a part of which is to be, or is, at a place that is not within the area of a relevant planning authority; or
    - (b) the extension of a generating station at or to a place the whole or a part of which is not within such an area.
  - (2) This Schedule shall have effect in relation to cases to which this paragraph applies with the following modifications.
  - (3) In paragraph 1(1), for the words from “land to which” onwards substitute “ place to which the application relates, that is, the place where it is proposed to construct the generating station, where the proposed extension will be or where the station proposed to be operated is situated. ”
  - (4) Paragraph 2 does not apply where no part of the place to which the application relates is within the area of a relevant planning authority.
  - (5) In paragraph 4—
    - (a) in sub-paragraph (1)—
      - (i) in paragraph (a), for “land” substitute “ place ”; and
      - (ii) in paragraph (b), for “in the locality” substitute “ in the area specified in or determined in accordance with regulations made by the Secretary of State ”;
    - (b) in sub-paragraph (2), for the words from “the locality” onwards substitute “ the area specified in or determined in accordance with regulations made by the Secretary of State. ”; and
    - (c) in sub-paragraph (3), for “in the locality” substitute “ who are likely to be affected by the consent applied for if it is given ”.
  - (6) Paragraph 5 does not apply; but sub-paragraphs (7) to (10) apply where—
    - (a) a public inquiry is to be held in accordance with paragraph 2(2) or 3(2); and
    - (b) the application for consent relates to a place a part of which is in the area of one or more relevant planning authorities.
  - (7) Except in so far as the Secretary of State otherwise directs, an inquiry held in accordance with paragraph 2(2) must be confined to so much of the application as relates to land within the area of the authority by whom an objection has been made.

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- (8) The Secretary of State must have regard to objections made otherwise than by the authority in question in determining whether to give a direction under sub-paragraph (7) and in determining (where he gives one) what direction to give.
  - (9) The Secretary of State may direct that separate inquiries may be held in relation to any or each of the following—
    - (a) so much of the application as relates to land within the area of a particular relevant planning authority;
    - (b) so much of the application as relates to anywhere that is not within the area of a relevant planning authority.
  - (10) For the purposes of sub-paragraph (7) a planning authority that has made an objection is to be treated as not having done so if the Secretary of State proposes to accede to the application subject to such modifications or conditions as meet that objection.”
- (3) In section 36(9) of that Act (definition of extension), after “land” insert “ or area of waters ”.
  - (4) The functions conferred by virtue of this section on the Secretary of State are not to be exercisable by the Scottish Ministers, except in pursuance of an Order in Council made after the passing of this Act under section 63 of the Scotland Act 1998 (c. 46).

#### Commencement Information

**I10** S. 93 in force at 1.3.2005 by S.I. 2005/442, art. 2(1), Sch. 1

## 94 Application of regulations under 1989 Act offshore

- (1) In section 29 of the 1989 Act (regulations relating to supply and safety), after subsection (1) insert—

“(1A) Regulations under this section may include provision for securing the purposes mentioned in subsection (1) in relation to the territorial sea adjacent to Great Britain or any Renewable Energy Zone.”
- (2) In section 30 of that Act (electrical inspectors), after subsection (3) insert—

“(3A) The regulations that may be made under this section include regulations—

  - (a) imposing duties on electrical inspectors in relation to anything in the territorial sea adjacent to Great Britain or a Renewable Energy Zone;  
or
  - (b) making any other provision authorised by this section in relation to activities carried on there.”

#### Commencement Information

**I11** S. 94 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Status: Point in time view as at 23/03/2005. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 01/10/2005

### *Safety zones for installations*

#### **95 Safety zones around renewable energy installations**

- (1) This section applies where—
  - (a) there is a proposal to construct a renewable energy installation in waters subject to regulation under this section, or to extend or to decommission a renewable energy installation situated in such waters;
  - (b) there is a proposal to operate a renewable energy installation on completion of its construction in such waters, or of any extension of it in such waters; or
  - (c) a renewable energy installation is being constructed, extended, operated or decommissioned in such waters.
- (2) If the Secretary of State considers it appropriate to do so for the purpose of securing the safety of—
  - (a) the renewable energy installation or its construction, extension or decommissioning,
  - (b) other installations in the vicinity of the installation or the place where it is to be constructed or extended,
  - (c) individuals in or on the installation or other installations in that vicinity, or
  - (d) vessels in that vicinity or individuals on such vessels,
 he may issue a notice declaring that such areas as are specified or described in the notice are to be safety zones for the purposes of this Chapter.
- (3) The power of the Secretary of State to issue a notice under this section shall be exercisable by him either—
  - (a) on an application made to him for the purpose by any person; or
  - (b) where no such application is made, on his own initiative.
- (4) Before issuing a notice under this section which relates, wholly or partly, to—
  - (a) an area of Scottish waters, or
  - (b) an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (5) An area may be declared to be a safety zone only if it is an area of waters around or adjacent to a place where a renewable energy installation is to be, or is being, constructed, extended, operated or decommissioned; but a safety zone may extend to waters outside the waters subject to regulation under this section.
- (6) A notice under this section—
  - (a) must identify the renewable energy installation, or proposed renewable energy installation, by reference to which it is issued;
  - (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 contain provision by virtue of which the area of a safety zone varies from time to time by reference to factors specified in, or determinations made in accordance with, the provisions of the notice;

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- (d) may contain provision imposing prohibitions on the carrying on in a safety zone of activities specified in, or determined in accordance with, the provisions of the notice, or for the imposition of such prohibitions;
  - (e) may contain provision granting permission for vessels to enter or remain in a safety zone or for persons to carry on prohibited activities, or for the grant of such permissions;
  - (f) may confer discretions, with respect to the making of determinations for the purposes of such a notice, on such persons as may be specified or described in the notice;
  - (g) may modify or revoke a previous notice; and
  - (h) may make different provision in relation to different cases.
- (7) Where a notice is issued under this section or a determination is made for the purposes of such a notice, the Secretary of State must either—
- (a) himself publish the notice or determination in such manner as he considers 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—
    - (i) by the applicant for the notice; or
    - (ii) in the case of a determination made by a person other than the Secretary of State, by the applicant for the notice or by the person who made the determination.
- (8) References in this section to a determination for the purposes of a notice include references to a determination made for those purposes in accordance with the notice, or with regulations under section 96—
- (a) to impose a prohibition;
  - (b) to grant a permission; or
  - (c) to impose conditions in relation to a permission.
- (9) Schedule 16 (which makes provision about the procedure for the declaration of safety zones) has effect.
- (10) The waters subject to regulation under this section are—
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
  - (b) waters within a Renewable Energy Zone.

## **96 Prohibited activities in safety zones**

- (1) A vessel is not to enter or remain in a safety zone except where permission for it to do so is granted—
- (a) by or in accordance with provision contained in a notice under section 95; or
  - (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (2) A person must not carry on an activity wholly or partly in a safety zone if his doing so is prohibited by or in accordance with provision contained in a notice under section 95.
- (3) Subsection (2) does not apply to the extent that carrying on the activity is permitted—
- (a) by or in accordance with provision contained in such a notice; or



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- (b) by or in accordance with provision contained in regulations made by the Secretary of State.
- (4) The provision that may be made with respect to permissions for the purposes of this section includes—
  - (a) provision for the permissions to apply in relation only to such times and such periods as may be specified or described in that provision; and
  - (b) provision for the permissions to apply only to such vessels, such persons and such purposes as may be specified or described in that provision.
- (5) The provision that may be made with respect to a permission for the purposes of this section includes provision imposing conditions in relation to a permission.
- (6) The conditions may include—
  - (a) conditions imposing obligations in relation to a vessel, or individuals on it, that must be satisfied while the vessel is in the safety zone; and
  - (b) conditions imposing obligations as to the manner in which any activity to which the permission relates is to be carried on.
- (7) Regulations under this section may confer discretions, with respect to the granting or imposition in accordance with the regulations of permissions or conditions, on such persons as may be specified or described in the regulations.
- (8) Regulations under this section are subject to the negative resolution procedure.

## **97 Offences relating to safety zones**

- (1) Where a vessel enters or remains in a safety zone in contravention of section 96(1), the vessel's owner and her master are each guilty of an offence.
- (2) Where—
  - (a) a vessel enters or remains in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the vessel or individuals on the vessel,
 the vessel's owner and her master are each guilty of an offence.
- (3) A person who carries on an activity wholly or partly in a safety zone in contravention of section 96(2) is guilty of an offence.
- (4) Where—
  - (a) a person carries on an activity wholly or partly in a safety zone with a permission granted for the purposes of section 96, and
  - (b) there is a contravention of a condition of that permission in relation to the carrying on of that activity,
 that person is guilty of an offence.
- (5) A person guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.



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- (6) In proceedings against a person as the owner of a vessel for an offence under subsection (1) or (2), it is a defence for him to show that the existence of the safety zone—
- (a) was not known to the master of the vessel in question at the time of the offence; and
  - (b) would not have become known to the master had he made reasonable inquiries before that time.
- (7) In any other proceedings against a person for an offence under this section, it is a defence for that person to show that the existence of the safety zone—
- (a) was not known to him at the time of the offence; and
  - (b) would not have become known to him had he made reasonable inquiries before that time.
- (8) It is also a defence in proceedings against a person for an offence under this section for that person to show that he took all reasonable steps to prevent the contravention in question.

## **98 Supplementary provisions relating to offences under s. 97**

- (1) Where the commission of an offence under section 97 is due—
- (a) in the case of an offence under subsection (1) or (2) of that section, to an act or omission of a person other than the owner or master of the vessel in question, or
  - (b) in the case of an offence under subsection (3) or (4) of that section, to an act or omission of a person other than the person carrying on the activity in question,
- that person is also guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (2) Where an offence under section 97 is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
- he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (3) Where an offence under section 97—
- (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
- he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where an offence under section 97 is committed outside of the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

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- (5) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for an offence under section 97.
- (6) In this section “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### *Navigation and civil aviation*

## 99 Navigation

- (1) After section 36 of the 1989 Act insert—

### **“36A Declarations extinguishing etc. public rights of navigation**

- (1) Where a consent is granted by the Secretary of State or the Scottish Ministers 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,
- he or (as the case may be) they 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.
- (2) The Secretary of State or the Scottish Ministers may make such a declaration only if the applicant for the consent made an application for such a declaration when making his application for the consent.
- (3) A declaration under this section is one declaring that the rights of navigation specified or described in it—
- (a) are extinguished;
  - (b) are suspended for the period that is specified in the declaration;
  - (c) are suspended until such time as may be determined in accordance with provision contained in the declaration; or
  - (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
- (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
  - (b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—
- (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;

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- (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 the Secretary of State or the Scottish Ministers, or a determination is made by him or them 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 him or them 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—
- “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.

### **36B Duties in relation to navigation**

- (1) Neither the Secretary of State nor the Scottish Ministers may grant a consent in relation to any particular offshore generating activities if he considers, or (as the case may be) they consider, 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.
- (2) It shall be the duty both of the Secretary of State and of the Scottish Ministers, 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, the Secretary of State or (as the case may be) the Scottish Ministers must have regard to the likely overall effect (both while being carried on and subsequently) of—
- (a) the activities in question; and

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- (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, the Secretary of State and the Scottish Ministers have exercised or will exercise their powers under section 36A above and section 100 of the Energy Act 2004 (extinguishment of public rights of navigation); and
  - (b) how, in relation to those activities, the Secretary of State has exercised or will exercise his powers under sections 95 and 96 and Chapter 3 of Part 2 of that Act (safety zones and decommissioning).
- (5) If the person who has granted a consent in relation to any offshore generating activities thinks it appropriate to do so in the interests of the safety of navigation, he may at any time vary conditions of the consent so as to modify in relation to any of the following matters the obligations imposed by those conditions—
- (a) the provision of aids to navigation (including, in particular, lights and signals);
  - (b) the stationing of guard ships in the vicinity of the place where the activities are being or are to be carried on; or
  - (c) the taking of other measures for the purposes of, or in connection with, the control of the movement of vessels in that vicinity.
- (6) A modification in exercise of the power under subsection (5) must be set out in a notice given by the person who granted the consent to the person whose obligations are modified.
- (7) In this section—
- “consent” means a consent under section 36 above;
  - “offshore generating activities” means—
    - (a) the construction or operation of a generating station that is to comprise or comprises (in whole or in part) renewable energy installations; or
    - (b) an extension of a generating station that is to comprise (in whole or in part) renewable energy installations or an extension of such an installation;
  - “the use of recognised sea lanes essential to international navigation” means—
    - (a) anything that constitutes the use of such a sea lane for the purposes of Article 60(7) of the United Nations Convention on the Law of the Sea 1982 (Cmnd 8941); or
    - (b) any use of waters in the territorial sea adjacent to Great Britain that would fall within paragraph (a) if the waters were in a Renewable Energy Zone.
- (8) In subsection (7) “extension”, in relation to a renewable energy installation, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (2) In paragraph 8 of Schedule 8 to that Act (supplementary provisions relating to applications under section 36 of that Act), after sub-paragraph (2) insert—

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- “(3) Where an application for a declaration under section 36A of this Act is made with an application for a consent under section 36 of this Act, the application for the declaration shall be treated for the purposes of this Schedule as part of the application for the consent.”
- (3) In section 3D of that Act (principal objective and general duties not to apply to Secretary of State’s functions under section 36 or 37), for “section 36 or 37” substitute “sections 36 to 37”.
- (4) In subsection (1) of section 35 of the Coast Protection Act 1949 (c. 74) (operations not requiring consent under section 34), after paragraph (g) insert—
- “(ga) subject to subsection (3) of this section, any operations comprised in offshore generating activities carried out in accordance with a consent under section 36 of the Electricity Act 1989 granted after the commencement of section 99 of the Energy Act 2004;”.
- (5) After subsection (2) of that section insert—
- “(3) Operations in or as regards Scotland fall within paragraph (ga) of that subsection only if and to the extent that the Scottish Ministers by order made by statutory instrument so provide.
- (4) A statutory instrument containing an order under subsection (3) shall not be made unless a draft of the instrument has been laid before and approved by a resolution of the Scottish Parliament.
- (5) In that paragraph “offshore generating activities” has the same meaning as in section 36B of the Electricity Act 1989.”

#### Commencement Information

**I12** S. 99 in force at 1.3.2005 for specified purposes by [S.I. 2005/442](#), art. 2(1), [Sch. 1](#)

VALID FROM 01/09/2005

#### **100 Further provision relating to public rights of navigation**

- (1) This section applies where a consent falling within subsection (2) has been granted by the Secretary of State or the Scottish Ministers (“the consenting authority”) under section 36 of the 1989 Act (consent required for construction etc. of generating stations) before the commencement of section 99.
- (2) A consent falls within this subsection if it relates 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 in relevant waters; or
- (b) an extension of a generating station that comprises or is to comprise (in whole or in part) renewable energy installations so situated or an extension of such an installation.
- (3) On an application made by the generator, the consenting authority may make a declaration under this section as respects rights of navigation—

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- (a) so far as they pass through the places where the renewable energy installations are situated or are to be situated; or
  - (b) so far as they pass through some of those places.
- (4) 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.
- (5) Subsections (4) to (6) of section 36A of the 1989 Act (declarations extinguishing etc. rights of navigation upon grant of consent under section 36 of that Act) shall apply in relation to declarations under this section as they apply in relation to declarations under that section, but with the omission of subsection (5)(c).
- (6) Before making a declaration under this section, the consenting authority must—
- (a) publish details of the generator’s application in such manner as that authority considers appropriate;
  - (b) give notice of that application to such persons as that authority considers appropriate;
  - (c) consult the persons to whom notice has been given;
  - (d) make such arrangements as that authority considers appropriate for a copy of the application to be made available for inspection by members of the public; and
  - (e) give such opportunities to such persons as that authority considers appropriate to make representations to the authority about the application.
- (7) The consenting authority may satisfy the requirements of paragraphs (a) to (d) of subsection (6) by securing that the things that it is required to do under those paragraphs are done on its behalf by the generator.
- (8) In this section—
- “generator”, in relation to a consent under section 36 of the 1989 Act, means the person who is constructing or operating the station in question, or making the extension in question, or who is proposing to do so;
  - “relevant waters” has the same meaning as in section 36A of the 1989 Act.

## **101 Application of civil aviation regulations to renewable energy installations**

- (1) Schedule 13 to the Civil Aviation Act 1982 (c. 16) (subordinate instruments) is amended as follows.
- (2) In the Table in Part 2 (provisions applying to certain powers), in the entry for section 60, in column 4 (applicable paragraphs of Part 3 of the Schedule), for “and 6” substitute “, 6 and 7”.
- (3) In paragraph 6 of Part 3 (extra-territorial provisions), in sub-paragraph (4) for “sub-paragraph (5)” substitute “ sub-paragraphs (5) and (7) ”.
- (4) After sub-paragraph (6) of that paragraph insert—

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- “(7) So far as relates to a provision of an Order in Council or regulation concerning aircraft on or in the neighbourhood of a renewable energy installation, this paragraph—
- (a) shall apply to all aircraft, and not only to aircraft registered in the United Kingdom; and
  - (b) shall apply to the doing of anything in relation to an aircraft by any person, irrespective of nationality, or (in the case of a body corporate) of the law under which it was incorporated.
- (8) For the purposes of sub-paragraphs (5) and (7) the neighbourhood of an installation includes anywhere within 500 metres of that installation.
- (9) In this paragraph “renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”
- (5) After that paragraph insert—

- “7
- (1) Without prejudice to paragraph 6 above, an Air Navigation Order may make provision in relation to renewable energy installations located within a Renewable Energy Zone as if those installations were located in a part of the United Kingdom.
  - (2) Such provision may apply to any person irrespective of nationality or (in the case of a body corporate) of the law under which it was incorporated.
  - (3) In this paragraph “renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004.”

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**Commencement Information**

**113** [S. 101](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

*Supplementary provisions of Chapter 2 of Part 2*

**102 Amendments of 1989 Act consequential on Chapter 2 of Part 2**

- (1) The 1989 Act is amended as follows.
- (2) In section 61(2) (concurrent proceedings for compulsory purchase and in respect of consents under section 36 of that Act), at the end insert “ and with any related proceedings under Schedule 16 to the Energy Act 2004 ”.
- (3) In section 62(3) (power to combine inquiries)—
  - (a) in paragraph (a), after “this Part” insert “ or Schedule 16 to the Energy Act 2004 ”; and
  - (b) in paragraph (b), after “this Part” insert “ , that Schedule ”.
- (4) In section 64(1) (interpretation of Part 1)—
  - (a) after the definition of “authorised supplier” insert—

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““construct” and “construction”, in relation to so much of a generating station as comprises or is to comprise renewable energy installations, has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004;”;

- (b) after the definitions of “relevant condition” and “relevant requirement” insert—

““renewable energy installation” and “Renewable Energy Zone” have the same meanings as in Chapter 2 of Part 2 of the Energy Act 2004;”.

- (5) After section 108 insert—

#### **“108A Extraterritorial operation of Act**

- (1) Where by virtue of this Act an act or omission taking place outside Great Britain constitutes an offence, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in Great Britain.
- (2) Provision made by or under this Act in relation to places outside Great Britain—
- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
- (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.”

#### **Commencement Information**

**I14** S. 102(1)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **103 Other amendments consequential on Chapter 2 of Part 2**

- (1) In section 8 of the Continental Shelf Act 1964 (c. 29) (application of Submarine Telegraph Act 1885 to pipelines and submarine cables)—
- (a) in subsection (1), omit “high-voltage”; and
- (b) in subsection (1A), for the words from “pipe-lines under the high seas” onwards substitute “submarine cables and pipe-lines under the high seas includes a reference to submarine cables and pipe-lines under the territorial sea adjacent to the United Kingdom or under waters in an area designated under section 1(7) of this Act”.
- (2) In section 23 of the Police and Criminal Evidence Act 1984 (c. 60) (meaning of premises)—
- (a) in the definition of “premises”, for the “and” at the end of paragraph (b) substitute—
- “(ba) any renewable energy installation;”;
- (b) after the definition of “offshore installation” insert—
- ““renewable energy installation” has the same meaning as in Chapter 2 of Part 2 of the Energy Act 2004.”



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- (3) In section 10(10) of the Petroleum Act 1998 (c. 17) (section to apply to installations in transit), after “transit” insert “ but does not apply to an installation that is a renewable energy installation (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004) ”.
- (4) After section 47 of that Act insert—

**“47A Factors for the Secretary of State to take into account**

- (1) The matters to which the Secretary of State may have regard, in exercising or performing the powers and duties conferred or imposed on him by or under this Act, include, in particular—
- (a) activities in relevant waters for or in connection with the generation of electricity;
  - (b) proposals made by a person to carry on such activities;
  - (c) the proposals that it appears to the Secretary of State may be made in the future for the carrying on of such activities; and
  - (d) the likelihood that activities will in due course be carried on in accordance with proposals falling within paragraph (b) or (c).
- (2) The reference in subsection (1) to activities in connection with the generation of electricity in relevant waters includes—
- (a) the transmission, distribution and supply of the electricity generated; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether activities in relevant waters for or in connection with the generation of electricity are, in a particular case, practicable or commercially viable, or both.
- (3) In this section—
- “distribution”, “generate”, “supply” and “transmission”, and cognate expressions, have the same meanings as in Part 1 of the Electricity Act 1989; and
- “relevant waters” means—
- (a) waters in or adjacent to the United Kingdom up to the seaward limits of the territorial sea; or
  - (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004).”

**Commencement Information**

**115** S. 103(2)(4) in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**104 Interpretation of Chapter 2 of Part 2**

- (1) In this Chapter—
- “construct”, in relation to an installation or an electric line or in relation to a generating station so far as it is to comprise renewable energy installations, includes—

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- (a) placing it in or upon the bed of any waters;
- (b) attaching it to the bed of any waters;
- (c) assembling it;
- (d) commissioning it; and
- (e) installing it;

and “construction” is to be construed accordingly;

“decommission”, in relation to an installation or an electric line, includes—

- (a) removing it from the bed of any waters;
- (b) demolishing it; and
- (c) dismantling it;

“distribution” and “electric line” have the same meanings as in Part 1 of the 1989 Act;

“extend” and “extension”—

- (a) in relation to a generating station, have the same meanings as in Part 1 of the 1989 Act; and
- (b) in relation to an installation, have the same meanings as in relation to a generating station;

“installation” includes artificial island, structure and device;

“master” includes—

- (a) in relation to a hovercraft, the captain;
- (b) in relation to any submersible apparatus, the person in charge of the apparatus; and
- (c) in relation to an installation in transit, the person in charge of the transit operation;

“renewable energy installation” is to be construed in accordance with subsections (3) to (5);

“Renewable Energy Zone” has the meaning given by section 84(4);

“safety zone” means an area which is a safety zone for the purposes of this Chapter by virtue of section 95;

“Scottish part”, in relation to a Renewable Energy Zone, means so much of that Zone as is designated under section 84(5);

“Scottish waters” means—

- (a) the internal waters of the United Kingdom that are in or are adjacent to Scotland; or
- (b) so much of the territorial sea of the United Kingdom as is adjacent to Scotland;

“submersible apparatus” has the meaning given by section 88(4) of the Merchant Shipping Act 1995 (c. 21);

“supply”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“transmission”, in relation to electricity, has the same meaning as in Part 1 of the 1989 Act;

“vessel” includes—

- (a) a hovercraft;
- (b) any submersible apparatus; and
- (c) an installation in transit.

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- (2) References in this Chapter to the production of energy from water include, in particular, references to its production from currents and tides.
- (3) In this Chapter “renewable energy installation” means—
- (a) an offshore installation used for purposes connected with the production of energy from water or winds;
  - (b) an installation in the course of construction at a place where it is to be used as an offshore installation within paragraph (a);
  - (c) an installation that has ceased to be an installation within paragraph (a) while remaining an offshore installation (whether or not at the same place);
  - (d) an installation that is being decommissioned at a place where it has been an installation within paragraph (a) or (c);
  - (e) an installation in transit to or from a place where it is to be, or has been, used for purposes that would make it, or made it, an installation within paragraph (a);
  - (f) an installation in transit to or from a place where it is to be, or was, an installation within paragraph (c).
- (4) In subsection (3) “offshore installation” means an installation which is situated in waters where—
- (a) it permanently rests on, or is permanently attached to, the bed of the waters; and
  - (b) it is not connected with dry land by a permanent structure providing access at all times for all purposes.
- (5) The purposes referred to in subsection (3)(a) include, in particular—
- (a) the transmission, distribution and supply of electricity generated using water or winds; and
  - (b) the doing of anything (whether by way of investigations, trials or feasibility studies or otherwise) with a view to ascertaining whether the generation of electricity in that manner is, in a particular case, practicable or commercially viable, or both.
- (6) Provision made by or under this Chapter in relation to places outside the United Kingdom—
- (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of a part of the United Kingdom.

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**Commencement Information**

**I16** S. 104 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

*Status: Point in time view as at 23/03/2005. This version of this part contains provisions that are not valid for this point in time.*

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VALID FROM 01/10/2005

## CHAPTER 3

### DECOMMISSIONING OF OFFSHORE INSTALLATIONS

#### *Decommissioning programmes*

#### **105 Requirement to prepare decommissioning programmes**

- (1) This section applies where—
  - (a) there is a proposal by a person to construct a relevant object in waters regulated under this Chapter, or to extend a relevant object in such waters;
  - (b) there is a proposal by a person to operate or to use a relevant object in such waters on the completion of its construction, or of any extension of it in such waters; or
  - (c) a person is constructing, extending, operating or using a relevant object in such waters or has begun in such waters to decommission such an object.
- (2) The Secretary of State may by notice require that person to submit to him a programme for decommissioning the relevant object (a “decommissioning programme”).
- (3) The Secretary of State may require a person to submit a decommissioning programme in respect of proposals made by that person only if the Secretary of State is satisfied that at least one of the statutory consents required for enabling that person to give effect to those proposals—
  - (a) has been given; or
  - (b) has been applied for and is likely to be given;
 but for this purpose it is immaterial that a statutory consent that has been or may be given will have no effect before a particular time or unless particular conditions are satisfied.
- (4) Where there is more than one person to whom a notice under this section may be given—
  - (a) it may be given to any one or more of them; and
  - (b) where it is given to more than one of them, the requirement to submit a programme must be satisfied by all those persons acting jointly.
- (5) Before giving a notice under this section in relation to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters; or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (6) A notice under this section must either—
  - (a) specify the date by which the decommissioning programme is to be submitted; or

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- (b) require it to be submitted on or before such date as the Secretary of State may direct.
- (7) A notice under this section may require the recipient of the notice to carry out the consultations specified in the notice before submitting the programme required of him.
- (8) A decommissioning programme—
- (a) must set out measures to be taken for decommissioning the relevant object;
  - (b) must contain an estimate of the expenditure likely to be incurred in carrying out those measures;
  - (c) must make provision for the determination of the times at which, or the periods within which, those measures will have to be taken;
  - (d) if it proposes that the relevant object will be wholly or partly removed from a place in waters regulated under this Chapter, must include provision about restoring that place to the condition that it was in prior to the construction of the object; and
  - (e) if it proposes that the relevant object will be left in position at a place in waters regulated under this Chapter or will not be wholly removed from a place in such waters, must include provision about whatever continuing monitoring and maintenance of the object will be necessary.
- (9) A notice under this section may require the recipient of the notice to submit any of the following with the decommissioning programme—
- (a) such information and documents relating to the place where the relevant object is or is to be situated as may be specified in the notice;
  - (b) such specifications relating to the relevant object as may be specified in the notice;
  - (c) such information and documents relating to the financial affairs of the recipient as may be specified in the notice; and
  - (d) details of the security (if any) that the recipient proposes to provide in relation to the carrying out of the decommissioning programme and for his compliance with any conditions of its approval.
- (10) In this Chapter—
- “relevant object” means the whole or any part of—
    - (a) a renewable energy installation; or
    - (b) an electric line that is or has been a related line;
  - “waters regulated under this Chapter” means—
    - (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea; and
    - (b) waters in a Renewable Energy Zone.
- (11) In this section—
- “related line” means an electric line which is a line for the conveyance of electricity to or from a renewable energy installation but is not an electricity interconnector (within the meaning of Part 1 of the 1989 Act); and
  - “statutory consent” means a consent, licence or approval required by or under any enactment.

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## **106 Approval of decommissioning programmes**

- (1) The Secretary of State may either approve or reject a programme submitted to him under section 105.
- (2) Before approving or rejecting a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (3) If the Secretary of State approves a programme, he may do so—
  - (a) with or without modifications; and
  - (b) either subject to conditions or unconditionally.
- (4) His power to approve it subject to conditions includes, in particular, power to approve it subject to a condition that the person who submitted the programme—
  - (a) provides such security in relation to the carrying out of the programme, and for his compliance with the conditions (if any) of its approval, as may be specified by the Secretary of State; and
  - (b) provides that security at such time, and in accordance with such requirements, as may be specified by the Secretary of State.
- (5) Before approving a programme with modifications or subject to conditions, the Secretary of State must give the person who submitted it an opportunity of making representations about the proposed modifications or conditions.
- (6) The power of the Secretary of State to approve a programme subject to conditions includes power, where more than one person submitted it, to impose different conditions in relation to different persons.
- (7) If he rejects a programme, the Secretary of State—
  - (a) must inform the person who submitted it of his reasons for doing so; and
  - (b) may exercise his power under section 105 to require the submission of a new one.
- (8) The Secretary of State must act without unreasonable delay in reaching a decision as to whether to approve or reject a programme.

## **107 Failure to submit or rejection of decommissioning programmes**

- (1) Where—
  - (a) a notice given under section 105 is not complied with, or
  - (b) the Secretary of State rejects a programme submitted to him,
 the Secretary of State may himself prepare a decommissioning programme in relation to the relevant object in question.
- (2) Before himself preparing a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
  - (a) in an area of Scottish waters, or
  - (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.

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- (3) Where the Secretary of State prepares a decommissioning programme under this section—
- (a) he must give notice informing the recipient of the notice given under section 105 that he has done so; and
  - (b) this Chapter shall have effect subsequently as if the Secretary of State's programme were a programme submitted to him by the person informed and had been approved by the Secretary of State subject to the conditions specified by the Secretary of State.
- (4) Where the Secretary of State informs a person under subsection (3) that he has prepared his own decommissioning programme, he may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with its conditions (if any), as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the deemed approval of the programme.
- (5) The Secretary of State may by notice require the recipient of a notice under section 105 to provide him with such information and documents as he may require for the purpose of exercising his powers under subsections (1) and (4).
- (6) Information and documents required to be provided under subsection (5) must be provided within such period as may be specified in the notice under that subsection.
- (7) A person who fails, without reasonable excuse, to comply with a notice under subsection (5) is guilty of an offence.
- (8) The power of the Secretary of State to impose requirements under this section includes power, where there is more than one person on whom he may impose them, to impose different requirements in relation to different persons.
- (9) Where, having given a notice under section 105, the Secretary of State prepares his own decommissioning programme, he may recover expenditure incurred by him in, or in connection with, the exercise of his powers under this section from the recipient of the notice.
- (10) A person liable to pay a sum to the Secretary of State by virtue of subsection (9) must also pay interest on that sum for the period which—
- (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (11) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

## **108 Reviews and revisions of decommissioning programmes**

- (1) The Secretary of State must, from time to time, conduct such reviews of a decommissioning programme approved by him as he considers appropriate.
- (2) A proposal—



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- (a) to modify a decommissioning programme approved by the Secretary of State, or
- (b) to modify a condition to which such a programme is subject,
- may be made by the Secretary of State, or by the person who submitted the programme or (if there is more than one of them) by all of them acting jointly.
- (3) A proposal—
- (a) to relieve a person of his duty under section 109(1) in relation to a decommissioning programme approved by the Secretary of State, or
- (b) as respects such a programme, to impose that duty upon a person not previously subject to it (whether in addition to or in substitution for another person),
- may be made by the Secretary of State or by the person for the time being subject to that duty or (if there is more than one person subject to that duty) by any one or more of them.
- (4) A proposal under subsection (2) or (3) may be made only by way of notice given—
- (a) if the proposal is the Secretary of State's, to every person whose duty under section 109(1) in relation to the programme would be affected or relieved under the proposal or who would become subject to such a duty; and
- (b) in any other case, to the Secretary of State.
- (5) An opportunity of making representations to the Secretary of State about a proposal of his under this section must be given by him to every person to whom notice of the proposal is required to have been given.
- (6) It is to be for the Secretary of State, after considering any representations made to him, to determine whether or not effect should be given to a proposal of his, or of any other person, under this section.
- (7) Before making a determination under subsection (6) with respect to a proposal in relation to a decommissioning programme relating to a relevant object which is to be or is, wholly or partly—
- (a) in an area of Scottish waters, or
- (b) in an area of waters in a Scottish part of a Renewable Energy Zone,
- the Secretary of State must consult the Scottish Ministers.
- (8) Where the Secretary of State makes a determination under subsection (6), he must give notice of his determination, and of his reasons for it, to—
- (a) every person who, before the determination, had a duty under section 109(1) in relation to the programme; and
- (b) every person who will become subject to such a duty as a result of the determination.
- (9) Where the Secretary of State gives notice under subsection (8) in respect of a proposal, this Chapter shall have effect after the giving of that notice—
- (a) in the case of a proposal under subsection (2), as if the programme in question had been approved subject to the modifications specified in the determination; and
- (b) in the case of a proposal under subsection (3), as if that programme had been submitted to the Secretary of State by the person or persons so specified.



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- (10) Where the Secretary of State gives notice under subsection (8) to a person that he is to become subject to a duty under section 109(1) in relation to a programme, the Secretary of State may by notice to that person require him—
- (a) to provide such security in relation to the carrying out of the programme, and for his compliance with any conditions of its approval, as may be specified by the Secretary of State; and
  - (b) to provide it at such time, and in accordance with such requirements, as may be specified by the Secretary of State;
- and a requirement under this subsection has effect as if it were a condition of the approval of the programme.

### *Implementation of decommissioning programmes*

#### **109 Carrying out of decommissioning programmes**

- (1) Where a decommissioning programme is approved by the Secretary of State, it shall be the duty of the person who submitted the programme to secure—
- (a) that it is carried out in every respect; and
  - (b) that all the conditions to which the approval is subject are complied with.
- (2) Where a relevant object is subject to a decommissioning programme approved by the Secretary of State, it is an offence for a person to take any measures for decommissioning that object unless he does so—
- (a) in accordance with the programme; or
  - (b) with the agreement of the Secretary of State.

#### **110 Default in carrying out decommissioning programmes**

- (1) Where—
- (a) a decommissioning programme approved by the Secretary of State is not carried out in a particular respect, or
  - (b) a condition to which the approval is subject is contravened,
- the Secretary of State may, by notice, require a person subject to the duty under section 109(1) in relation to the programme to take such remedial action as may be specified in the notice.
- (2) Remedial action required by a notice under this section must be taken within such period as may be specified in the notice.
- (3) A person who fails to comply with a notice given to him under this section is guilty of an offence.
- (4) In proceedings against a person for an offence under this section it is a defence for him to show that he exercised due diligence to avoid the contravention in question.
- (5) If a notice under this section is not complied with, the Secretary of State may—
- (a) himself secure the carrying out of the remedial action required by the notice; and
  - (b) recover any expenditure incurred by him in doing so from the person to whom the notice was given.

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- (6) A person liable to pay a sum to the Secretary of State by virtue of subsection (5) must also pay interest on that sum for the period which—
  - (a) begins with the day on which the Secretary of State notified him of the sum payable; and
  - (b) ends with the date of payment.
- (7) The rate of interest shall be a rate determined by the Secretary of State to be comparable with commercial rates.

### *Decommissioning regulations*

## **111 Regulations about decommissioning**

- (1) The Secretary of State may make regulations relating to the decommissioning of relevant objects in waters regulated under this Chapter.
- (2) The provision that may be contained in regulations under this section includes, in particular—
  - (a) provision prescribing standards in respect of decommissioning;
  - (b) provision prescribing standards and safety requirements in respect of anything left in place where a relevant object is not wholly removed;
  - (c) provision about the security that a person may be required to provide under this Chapter;
  - (d) provision for the prevention of pollution;
  - (e) provision for inspections, including provision as to the payment of the costs of inspections.
- (3) Regulations under this section may include provision making it an offence to contravene provisions of the regulations.
- (4) Where the regulations under this section create an offence, they must make provision as to the mode of trial and punishment of offenders; but there is no power for regulations under this section—
  - (a) to impose a penalty of imprisonment on summary conviction, or to impose a maximum fine, on summary conviction, of more than the statutory maximum; or
  - (b) to impose a maximum term of imprisonment, on conviction on indictment, of more than two years.
- (5) Before making regulations under this section, the Secretary of State must consult—
  - (a) organisations appearing to him to be representative of persons who will be affected by the regulations; and
  - (b) any other persons he considers appropriate.
- (6) Before making regulations under this section containing provision that relates to the decommissioning of relevant objects which are to be or are, wholly or partly—
  - (a) in Scottish waters, or
  - (b) in waters in a Scottish part of a Renewable Energy Zone,
 the Secretary of State must consult the Scottish Ministers.
- (7) Regulations under this section are subject to the negative resolution procedure.

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### Supplementary provisions of Chapter 3 of Part 2

#### 112 Duty to inform Secretary of State

- (1) A person who becomes responsible for a relevant object must notify the Secretary of State that he has become so responsible.
- (2) For the purposes of this section a person becomes responsible for a relevant object if—
  - (a) he makes a proposal to construct the object in waters regulated under this Chapter;
  - (b) he makes a proposal for the extension or decommissioning in such waters of the object;
  - (c) he makes a proposal to operate or use the object on completion of its construction in such waters;
  - (d) he makes a proposal to operate or use the object on completion in such waters of any extension of it;
  - (e) he becomes a party to a proposal mentioned in paragraphs (a) to (d);
  - (f) he begins in such waters to construct, to extend, to operate or use or to decommission the object;
  - (g) he begins to participate in any of the following activities carried on in such waters, the construction, extension, operation or use or decommissioning of the object.
- (3) A person is not required to notify the Secretary of State that he has made a proposal, or become a party to a proposal, at any time before at least one of the statutory consents required for enabling effect to be given to the proposal has been given or applied for.
- (4) A person who notifies the Secretary of State under this section that he has made a proposal, or has become a party to a proposal—
  - (a) must specify in the notification what statutory consents required for giving effect to the proposal have been given, and what applications for such consents have been made; and
  - (b) must notify him subsequently whenever such a consent or application is given or made.
- (5) A notification under this section must be given within such period after the obligation to give the notification arises as may be prescribed by regulations made by the Secretary of State.
- (6) A person who contravenes the requirements of this section is guilty of an offence.
- (7) Regulations under this section are subject to the negative resolution procedure.
- (8) A reference in this section to participation in activities does not include a reference—
  - (a) to participation on behalf of another person; or
  - (b) to participation by acting in pursuance of an agreement to provide a service or services to a person carrying on those activities.
- (9) In this section “statutory consent” has the same meaning as in section 105.

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### **113 Offences relating to decommissioning programmes**

- (1) A person guilty of an offence under a provision of this Chapter is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both.
- (2) No proceedings for a decommissioning offence shall be instituted in England and Wales or Northern Ireland except—
  - (a) by the Secretary of State;
  - (b) by a person authorised in that behalf by the Secretary of State; or
  - (c) by or with the consent of the Director of Public Prosecutions or (as the case may be) the Director of Public Prosecutions for Northern Ireland.
- (3) Where a decommissioning offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate, or
  - (b) a person who was purporting to act in any such capacity,
 he (as well as the body corporate) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (4) Where such an offence—
  - (a) is committed by a Scottish firm, and
  - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,
 he (as well as the firm) is guilty of that offence and shall be liable to be proceeded against and dealt with accordingly.
- (5) Where a decommissioning offence is committed outside the United Kingdom, proceedings for the offence may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (6) Section 3 of the Territorial Waters Jurisdiction Act 1878 (c. 73) (consents to prosecution of offences committed on the open sea by persons who are not British citizens) does not apply to proceedings for a decommissioning offence.
- (7) In this section—
 

“decommissioning offence” means an offence under—

  - (a) a provision of this Chapter; or
  - (b) regulations made under section 111;

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

### **114 Interpretation of Chapter 3 of Part 2**

- (1) Expressions used in this Chapter and in Chapter 2 of this Part have the same meanings in this Chapter as in that Chapter.
- (2) In this Chapter—
 

“decommissioning programme” has the meaning given by section 105(2);

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“extend” and “extension”, in relation to an electric line, have the same meanings as they have in Chapter 2 of this Part and this Chapter in relation to a renewable energy installation;

“recipient”, in relation to a notice under section 105, means the person or any one or more of the persons to whom that notice was given;

“relevant object” has the meaning given by section 105(10);

“security” includes—

- (a) a charge over a bank account or any other asset;
- (b) a deposit of money;
- (c) a performance bond or guarantee;
- (d) a letter of credit; and
- (e) a letter of comfort;

“waters regulated under this Chapter” has the meaning given by section 105(10).

- (3) References in this Chapter to providing a security include references—
  - (a) to securing its maintenance or renewal; and
  - (b) to ensuring that its value is adjusted from time to time to take account of changes to the likely costs of the matters in respect of which it is given.
- (4) References in this Chapter to the person by whom a decommissioning programme was submitted are references, in the case of a programme submitted jointly by more than one person, to each of them.
- (5) Provision made by or under this Chapter in relation to places outside the United Kingdom—
  - (a) so far as it applies to individuals, applies to them whether or not they are British citizens; and
  - (b) so far as it applies to bodies corporate, applies to them whether or not they are incorporated under the law of any part of the United Kingdom.

## CHAPTER 4

### RENEWABLES OBLIGATIONS RELATING TO ELECTRICITY

#### 115 Discharge of renewables obligation in Great Britain by payment

- (1) In section 32(3) of the 1989 Act (renewables obligation), for the words from “must” to “produce” substitute “ must, by each specified day, have produced ”.
- (2) In section 32C of that Act (payment as an alternative to complying with a renewables obligation), in subsection (1) for the words from “that” onwards substitute—
  - “(a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the day specified as the day by which evidence must be produced for the purposes of section 32(3); and
  - (b) that an electricity supplier’s renewables obligation that was not discharged in whole or in part before the day so specified 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

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Authority before the end of such period beginning with that day as may be specified in the order.”

(3) In subsection (2) of that section (supplementary provisions of order providing for payments)—

(a) after paragraph (a) insert—

“(aa) 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 time by which evidence had to be produced for the purposes of section 32(3);”

(b) in paragraph (b), for “such sums” substitute “ sums or rates falling within paragraph (a) or (aa) ”;

(c) in paragraph (c), after “sums” insert “ or rates ”; and

(d) in paragraph (d), after “sum” insert “ or rate ”.

(4) For subsection (3) of that section substitute—

“(2A) An order under section 32 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 day by which the obligation had to be complied with) 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.

(2B) An order under section 32 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.

(2C) An order under section 32 may not by virtue of subsection (2B) 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 (2A) 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

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the taking of steps in relation to contraventions of Northern Ireland obligations for that period.

(2D) The provision that may be made by virtue of subsection (2B) 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 he were a licence holder.

(3) The amounts received by the Authority by virtue of the preceding provisions of this section must be paid by it to electricity suppliers in accordance with a system of allocation specified in an order under section 32.”

(5) In that section, at the end insert—

“(6) References in this section to an electricity supplier’s renewables obligation include references to its renewables obligation in relation to a particular period.

(7) For the purposes of this section—

- (a) 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, and
- (b) 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, the Authority or (as the case may be) the Northern Ireland authority would have received more by way of discharge payments if every renewables obligation or (as the case may be) Northern Ireland obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.

(8) In this section—

“discharge payment”, in relation to a period, means—

- (a) a payment by virtue of paragraph (a) of subsection (1) 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 paragraph (b) of that subsection 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 day mentioned in that paragraph; 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;

“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



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- (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.”
- (6) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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

- C1** S. 115(6): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

**Commencement Information**

- I17** S. 115 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**116 Issue of green certificates in Great Britain**

- (1) Section 32B of the 1989 Act (green certificates) is amended as follows.
- (2) In subsection (1), for “or to an electricity supplier” substitute “, to an electricity supplier or to a Northern Ireland supplier”.
- (3) After that subsection insert—
- “(1A) A certificate is to certify either the matters within subsection (2) or the matters within subsection (2A).”
- (4) In subsection (2)—
- (a) for “A certificate is to certify” substitute “The matters within this subsection are”;
- (b) in paragraph (a), after “an electricity supplier” insert “or to a Northern Ireland supplier”.
- (5) After that subsection insert—
- “(2A) The matters within this subsection are—
- (a) that the generating station or, in the case of a certificate issued to an electricity supplier or to a Northern Ireland supplier, 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 to customers in Northern Ireland.
- (2B) An order under section 32 must—
- (a) prohibit the issue of a certificate certifying matters within subsection (2A) 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 production for the purposes of provision made by virtue of subsection (4).”
- (6) In subsection (3), after “Authority” insert “ that certifies matters within subsection (2) ”.
- (7) After that subsection insert—
  - “(4) An order under section 32 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 certificate that certifies matters within subsection (2A).
  - (5) References in this section to the supply of electricity to customers in Northern Ireland shall be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.”
- (8) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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

**C2** S. 116(8): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

**Commencement Information**

**I18** S. 116 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 117 Use of green certificates issued in Northern Ireland

- (1) After section 32B of the 1989 Act insert—

### “32BA Use of green certificates issued in Northern Ireland

- (1) An order under section 32 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 Article 54 of the Energy (Northern Ireland) Order 2003, in an order

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under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).”

- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.
- (3) In Article 56(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (power to amend Part 7 of that Order to take account of amendments of corresponding Great Britain provisions), the reference to amendments made to sections 32 to 32C of the 1989 Act includes a reference to subsection (1) of this section.
- (4) Subsection (3) extends to Northern Ireland only.

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

**C3** [S. 117\(2\)](#): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

**Commencement Information**

**I19** [S. 117](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**118 Distributions to Northern Ireland suppliers**

- (1) In section 32C of the 1989 Act (payment of money to discharge renewables obligation and distribution of fund to electricity suppliers), after subsection (4) insert—
  - “(5) The references in subsections (3) and (4) to electricity suppliers include references to persons who are Northern Ireland suppliers.”
- (2) The requirements of section 32(7) of the 1989 Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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

**C4** [S. 118\(2\)](#): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

**Commencement Information**

**I20** [S. 118](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**119 Supplementary provision relating to renewables obligation in Great Britain**

- (1) In subsection (3) of section 32 of the 1989 Act (definition of renewables obligation), for “and 32C” substitute “ to 32C ”.
- (2) In subsection (7) of that section, for paragraph (d) substitute—
  - “(d) such generators of electricity from renewable sources as he considers appropriate; and”.

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(3) After subsection (8) of that section insert—

“(8A) In this section and in sections 32A to 32C—

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

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

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

(4) In section 32A of that Act (supplementary provision relating to orders under section 32), in subsection (3) for the words from “the differences” onwards substitute “no supplier would by virtue of the differences be unduly disadvantaged in competing with other suppliers”.

(5) After that subsection insert—

“(3A) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.”

(6) In subsection (7) of that section, for “obligation imposed” substitute “matters dealt with”.

(7) The requirements of section 32(7) of that Act (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.

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

**C5** [S. 119\(7\)](#): transfer of functions (23.3.2005) by [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#), art. 1, [Sch.](#) (with art. 6)

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**Commencement Information**

**I21** [S. 119](#) in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

## 120 Issue of green certificates in Northern Ireland

(1) Article 54 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (which contains provision corresponding to provision contained in section 32B of the 1989 Act) is amended as follows.

(2) After paragraph (2) insert—

“(2A) In paragraphs (1) and (2) “Northern Ireland” does not include any part of the territorial sea of the United Kingdom.

(2B) The provision that may be contained by virtue of this Article in an order under Article 52 includes—

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- (a) provision for the person to whom a certificate is to be issued to be determined either before or after the supply of the electricity to which it relates; and
  - (b) provision for a determination as to the person to whom a certificate is to be issued to be made in accordance with such arrangements as may be specified in or determined under the order.
- (2C) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, the arrangements within paragraph (2B)(b) that may be specified in or determined under the order include arrangements—
- (a) requiring the determination of the person to whom the certificate is to be issued to be made by reference to financial bids made in respect of the certificate or in respect of both the certificate and the electricity to which it relates; and
  - (b) requiring that person to make a payment, in accordance with his bid, to such person as may be specified in or determined under the order.
- (2D) In the case only of a certificate relating to electricity that has been acquired, or is required to be acquired, under a qualifying arrangement, provision falling within paragraph (2B)(b) may require the relevant person—
- (a) to make and implement the arrangements that are specified in or determined under the order; and
  - (b) to comply with directions given to him by the Authority for that purpose.
- (2E) A person who receives a payment in accordance with provision made by virtue of paragraph (2C)(b) shall apply the money received in such manner as the Department may direct.
- (2F) A direction under paragraph (2E) may require that the money received or part of that money be paid to the Department.
- (2G) Part VI shall apply in relation to a requirement imposed by virtue of paragraph (2D) or (2E) on a person who is not an electricity licence holder as if he were an electricity licence holder.”
- (3) After paragraph (3) insert—
- “(4) An order under Article 52 may confer on the Authority functions in Northern Ireland in relation to the issue of Great Britain certificates.
- (5) In this Article—
- “Great Britain certificates” means certificates that are or may be issued by the Gas and Electricity Markets Authority in accordance with provision included, by virtue of section 32B of the Electricity Act 1989, in an order under section 32 of that Act;
- “qualifying arrangement” means an arrangement made pursuant to an order under Article 35 of the Electricity Order (or such an arrangement as modified or replaced by virtue of an order under Article 57 of this Order);

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“relevant person” means, in relation to electricity that is acquired, or is required to be acquired, under a qualifying arrangement, the person who acquired it, or who is required to acquire it.”

- (4) The requirements of Article 52(6) of that Order (consultation before making an order) may be satisfied in the case of an order containing provision made by virtue of this section by consultation that took place wholly or partly before the commencement of this section.
- (5) This section extends to Northern Ireland only.

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**Commencement Information**

**I22** S. 120 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **121 GEMA’s power to act on behalf of Northern Ireland regulator**

- (1) GEMA and the Northern Ireland Authority for Energy Regulation (“the Northern Ireland Authority”) shall be entitled—
  - (a) to enter into arrangements for GEMA to act on behalf of the Northern Ireland Authority for, or in connection with, the carrying out of the 2003 renewables obligations functions; and
  - (b) to give effect to those arrangements.
- (2) In this section “the 2003 renewables obligations functions” means the functions conferred on the Northern Ireland Authority under or for the purposes of Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (renewables obligations for Northern Ireland suppliers).

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**Commencement Information**

**I23** S. 121 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## **122 Consultation in relation to Northern Ireland renewables orders**

- (1) This section applies where the Department of Enterprise, Trade and Investment in Northern Ireland amends the provisions of Part 7 of the 2003 Order (renewables obligations for Northern Ireland suppliers) by way of an amending order to take account of amendments of the 1989 Act made by this Chapter.
- (2) In the case of a renewables order containing provision made by virtue of the amending order, the requirements of Article 52(6) of the 2003 Order (consultation before making a renewables order) may be satisfied by consultation that took place wholly or partly before the amending order came into force (including consultation taking place before the commencement of this section).
- (3) In this section—
  - “amending order” means an order under Article 56 of the 2003 Order;
  - “the 2003 Order” means the Energy (Northern Ireland) Order 2003;
  - “renewables order” means an order under Article 52 of the 2003 Order.

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(4) This section extends to Northern Ireland only.

**Commencement Information**

**I24** S. 122 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**123 Modification of conditions of Northern Ireland electricity licences**

(1) In Part 7 of the Energy (Northern Ireland) Order 2003 (renewable energy sources), after Article 58 insert—

**“58A Modifications of licences in connection with Energy Act 2004**

- (1) Where the Department or the Authority considers it necessary or expedient to do so in connection with—
  - (a) amendments of this Order made by section 120 of the Energy Act 2004, or
  - (b) provision made by an order under Article 56 to take account of amendments of the Electricity Act 1989 made by Chapter 4 of Part 2 of that Act of 2004,
 it may modify the conditions of an electricity licence.
- (2) The power to make modifications under this Article includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification of a licence condition under this Article the Department shall consult the Authority and the licence holder.
- (4) Before making a modification of a licence condition under this Article the Authority shall—
  - (a) consult the licence holder; and
  - (b) obtain the consent of the Department to the modification.
- (5) Paragraphs (3) and (4)(a) may be satisfied by consultation—
  - (a) that, in the case of a modification within paragraph (1)(b), took place wholly or partly before the order in question comes into force; and
  - (b) that, in any case, took place wholly or partly before the commencement of this Article.
- (6) Where the Department or the Authority makes any modifications under this Article it shall publish those modifications in such manner as it considers appropriate.
- (7) The power conferred by virtue of paragraph (1)(a) may not be exercised after the end of the period of two years beginning with the commencement of this Article.
- (8) The power conferred by virtue of paragraph (1)(b) may not be exercised in relation to an order under Article 56 after the end of the period of two years beginning with the day on which the order comes into force.”

(2) This section extends to Northern Ireland only.

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**Commencement Information**

**I25** S. 123 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## CHAPTER 5

### RENEWABLE TRANSPORT FUEL OBLIGATIONS

#### 124 Imposition of renewable transport fuel obligations

- (1) The Secretary of State may by order impose on each transport fuel supplier of a specified description the obligation mentioned in subsection (2) (a “renewable transport fuel obligation”).
- (2) That obligation is an obligation, for each specified period, for the supplier to produce to the Administrator, by the specified date, evidence which—
  - (a) is of the specified kind and in the specified form; and
  - (b) shows that during the specified period the specified amount of renewable transport fuel was supplied at or for delivery to places in the United Kingdom.
- (3) An order under subsection (1) is referred to in this Chapter as an “RTF order”.
- (4) Before making an RTF order the Secretary of State must consult such persons appearing to him to represent persons whose interests will be affected by the order, and such other persons, as he considers appropriate.
- (5) The power to make an RTF order is subject to the affirmative resolution procedure.

**Commencement Information**

**I26** S. 124 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

#### 125 The Administrator

- (1) An RTF order may, for the purposes of provision made by or under this Chapter, appoint a person as the Administrator.
- (2) Such an order may—
  - (a) confer or impose powers and duties on the Administrator for purposes connected with the implementation of provision made by or under this Chapter;
  - (b) confer discretions on the Administrator in relation to the making of determinations under such an order and otherwise in relation to his powers and duties; and
  - (c) impose duties on transport fuel suppliers for purposes connected with the Administrator’s powers and duties.
- (3) The powers that may be conferred on the Administrator by virtue of subsection (2) include, in particular—



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- (a) power to require a transport fuel supplier to provide him with such information as he may require for purposes connected with the carrying out of the Administrator’s functions;
  - (b) power to impose requirements as to the form in which such information must be provided and as to the period within which it must be provided;
  - (c) power to impose charges of specified amounts on transport fuel suppliers.
- (4) Sums received by the Administrator by virtue of provision within subsection (3)(c) must be used by him for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (5) The duties that may be imposed by virtue of subsection (2)(c) include, in particular, duties framed by reference to determinations made by the Administrator.
- (6) Only the following persons may be appointed as the Administrator—
- (a) a body or other person established or appointed by or under any enactment to carry out other functions;
  - (b) a body established by virtue of subsection (8).
- (7) Where provision is made by an RTF order for the appointment of a body or other person within subsection (6)(a), such an order may make such modifications of any enactment relating to that body or person as the Secretary of State considers appropriate for the purpose of facilitating the carrying out of the functions of the Administrator.
- (8) An RTF order may—
- (a) establish a body corporate to be appointed as the Administrator;
  - (b) make provision for the appointment of members of that body;
  - (c) make provision in relation to the staffing of that body;
  - (d) make provision in relation to the expenditure of that body;
  - (e) make provision regulating the procedure of that body;
  - (f) make any other provision that the Secretary of State considers appropriate for purposes connected with the establishment and maintenance of that body.
- (9) The provision that may be made by virtue of subsection (8) in relation to a body corporate includes, in particular, provision conferring discretions on—
- (a) the Secretary of State;
  - (b) the body itself; or
  - (c) members or staff of the body.
- (10) The Secretary of State may make grants to the Administrator on such terms as the Secretary of State may determine.

**Commencement Information**

**127** S. 125 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

**126 Determinations of amounts of transport fuel**

- (1) An RTF order may make provision about how amounts of transport fuel are to be counted or determined for the purposes of provision made by or under this Chapter.

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- (2) The provision that may be made by virtue of this section includes, in particular—
- (a) provision for amounts of renewable transport fuel to count towards discharging a renewable transport fuel obligation for a period only if the fuel is of a specified description;
  - (b) provision for amounts of renewable transport fuel of a specified description to count towards discharging such an obligation only up to a specified amount;
  - (c) provision for such an obligation not to be treated as discharged unless a specified minimum amount of renewable transport fuel of a specified description has been counted towards its discharge;
  - (d) provision for only such proportion of any renewable transport fuel of a specified description as is attributable to a specified substance, source of energy, method, process or other matter to count towards discharging such an obligation;
  - (e) provision as to how that proportion is to be determined;
  - (f) provision for an amount of renewable transport fuel of a specified description to count towards discharging such an obligation only if, or to the extent that, specified conditions are satisfied in relation to its supply, the person by or to whom it was supplied or the place at or for delivery to which it was supplied;
  - (g) provision for evidence produced by a supplier in relation to any fuel not to count for the purposes of his renewable transport fuel obligation for a period if evidence in relation to the same fuel has previously been produced (whether by him or by another supplier);
  - (h) provision for evidence produced by a supplier in relation to any fuel not to count for those purposes if, after the supply to which the evidence relates, the fuel is supplied by any person at or for delivery to a place outside the United Kingdom or a specified part of the United Kingdom;
  - (i) provision about the measurement of amounts of different descriptions of transport fuel;
  - (j) provision for units of transport fuel of a specified description to count for more or less than the same units of transport fuel of other descriptions;
  - (k) provision about how measurements in different units of different descriptions of transport fuel are to be aggregated;
  - (l) provision for the application of presumptions where specified matters are shown.
- (3) The provision that may be made by virtue of this section also includes, in particular, provision which—
- (a) is made having regard to one or more of the effects mentioned in subsection (4) (whether in the United Kingdom or elsewhere); or
  - (b) requires regard to be had to one or more such effects.
- (4) Those effects are the effects of the production, supply or use of fuel of a particular description on—
- (a) carbon emissions;
  - (b) agriculture;
  - (c) other economic activities;
  - (d) sustainable development; or
  - (e) the environment generally.

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#### Commencement Information

**I28** S. 126 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 127 Renewable transport fuel certificates

- (1) An RTF order may make provision for the Administrator to issue certificates to transport fuel suppliers (“RTF certificates”).
- (2) An RTF certificate is to certify—
  - (a) that the supplier to whom it is issued has supplied the amount of renewable transport fuel stated in the certificate;
  - (b) that that amount of such fuel was supplied by him during the period stated in the certificate;
  - (c) that that amount of such fuel was supplied by him during that period at or for delivery to a place in the United Kingdom or in the part of the United Kingdom stated in the certificate; and
  - (d) the other specified facts.
- (3) Such a certificate may be issued to a supplier only if—
  - (a) he applies for it in the specified manner;
  - (b) his application includes evidence of the specified kind and in the specified form; and
  - (c) the other specified conditions are satisfied.
- (4) An RTF order may authorise transfers of RTF certificates (whether for a consideration or otherwise) between persons of specified descriptions.
- (5) Such an order may also provide that such a transfer is not to be effective unless—
  - (a) the specified details of it have been notified to the Administrator in the specified manner and within the specified time; and
  - (b) the other specified requirements have been complied with.
- (6) If a supplier produces an RTF certificate to the Administrator, it is to count for the purposes of section 124(2) as sufficient evidence of the facts certified.
- (7) An RTF order may provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period even if it is produced after the time by which evidence had to be produced for the purposes of that obligation.
- (8) Such an order may also provide that, in specified circumstances, evidence produced by virtue of subsection (6) may count to the specified extent towards the discharge of a renewable transport fuel obligation for a period that is later than the period stated in the certificate in question in accordance with subsection (2)(b).

#### Commencement Information

**I29** S. 127 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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## 128 Discharge of obligation by payment

- (1) An RTF order may provide that a person who does not wholly discharge his renewable transport fuel obligation for a period by the production of evidence must pay the Administrator the specified sum within the specified period.
- (2) The provision that may be made by virtue of subsection (1) includes, in particular, provision—
  - (a) for the specified sum to increase, in cases where that sum is not paid within a specified period, at the specified rate until it is paid or until the occurrence of a specified event;
  - (b) for specified amounts to be adjusted from time to time for inflation in the specified manner;
  - (c) for the repayment of sums in cases where provision made by virtue of section 127(7) applies in relation to a person;
  - (d) prohibiting the Administrator from taking steps to recover the specified sum or a part of that sum if specified conditions are satisfied.
- (3) Provision within subsection (2)(b) may refer, in particular, to a specified index or to other data, including any index or data as modified from time to time after the coming into force of the order.
- (4) An RTF order may provide that, in a case in which the amount of payments by virtue of subsection (1) which the Administrator has received by the specified time in respect of renewable transport fuel obligations for any period falls short of the amount due in respect of that period, the persons who—
  - (a) were subject to renewable transport fuel obligations for that period, and
  - (b) are of a specified description,must, within the specified period and in the specified circumstances, each make a payment (or further payment) to the Administrator of an amount calculated in the specified manner.
- (5) The provision that may be made by virtue of subsection (4) includes, in particular, provision for the making of adjustments and repayments after a requirement to make payments has already arisen.
- (6) An RTF order may require the Administrator to use, to the specified extent, the sums received by him by virtue of this section for the purpose of meeting costs incurred by him in carrying out his functions as the Administrator.
- (7) To the extent the Administrator does not so use the sums so received, they must be paid by him to transport fuel suppliers, or to transport fuel suppliers of a specified description, in accordance with the specified system of allocation.

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### Commencement Information

**I30** S. 128 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

## 129 Imposition of civil penalties

- (1) An RTF order may—
  - (a) designate a provision made by or under this Chapter for the purposes of this section; and

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- (b) provide that a person is to be liable to a civil penalty if—
  - (i) he contravenes that provision; and
  - (ii) any other specified conditions are satisfied.
- (2) Where the Administrator is satisfied that a person (the “defaulter”) is so liable, he may give a notice to the defaulter in the specified manner (a “civil penalty notice”) imposing on the defaulter a penalty of such amount as the Administrator considers appropriate.
- (3) That penalty must not exceed the lesser of—
  - (a) the specified amount; and
  - (b) the amount equal to ten per cent of the turnover, as determined in the specified manner, of the specified business of the defaulter.
- (4) The civil penalty notice must—
  - (a) set out the Administrator’s reasons for deciding that the defaulter is liable to a penalty;
  - (b) state the amount of the penalty that is being imposed;
  - (c) set out a date before which the penalty must be paid to the Administrator;
  - (d) describe how payment may be made;
  - (e) explain the steps that the defaulter may take if he objects to the penalty; and
  - (f) set out and explain the powers of the Administrator to enforce the penalty.
- (5) The date for the payment of the penalty must not be less than 14 days after the giving of the civil penalty notice.
- (6) A penalty imposed by virtue of this section must be paid to the Administrator—
  - (a) by the date set out in the civil penalty notice by which it is imposed; and
  - (b) in a manner described in that notice.
- (7) Sums received by the Administrator by virtue of this section must be paid to the Secretary of State, who must pay them into the Consolidated Fund.

#### **Commencement Information**

**I31** S. 129 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **130 Objections to civil penalties**

- (1) A person to whom a civil penalty notice is given may give notice to the Administrator that he objects to the penalty on one or both of the following grounds—
  - (a) that he is not liable to pay it;
  - (b) that the amount of the penalty is too high.
- (2) The notice of objection—
  - (a) must set out the grounds of the objection and the objector’s reasons for objecting on those grounds; and
  - (b) must be given to the Administrator in the specified manner and within the specified period after the giving of the civil penalty notice.
- (3) The Administrator must consider a notice of objection given in accordance with this section and may then—

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- (a) cancel the penalty;
  - (b) reduce it;
  - (c) increase it; or
  - (d) confirm it.
- (4) The Administrator must not enforce a penalty in respect of which he has received a notice of objection before he has notified the objector of the outcome of his consideration of the objection.
- (5) That notification of the outcome of his consideration must be given, in the specified manner—
  - (a) before the end of the specified period; or
  - (b) within such longer period as he may agree with the objector.
- (6) Where, on consideration of an objection, the Administrator increases the penalty, he must give the objector a new civil penalty notice; and, where he reduces it, the notification mentioned in subsection (5) must set out the reduced amount.

**Commencement Information**

**I32** S. 130 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### **131 Appeals against civil penalties**

- (1) A person to whom a civil penalty notice is given may appeal to the court on one or both of the following grounds—
  - (a) that he is not liable to pay the penalty;
  - (b) that the amount of the penalty is too high.
- (2) An appeal under this section must be brought within such period after the giving of the civil penalty notice as may be set out in rules of court.
- (3) On an appeal under this section, the court may—
  - (a) allow the appeal and cancel the penalty;
  - (b) allow the appeal and reduce the penalty; or
  - (c) dismiss the appeal.
- (4) An appeal under this section is to be by way of a rehearing of the Administrator's decision to impose the penalty.
- (5) The matters to which the court may have regard when determining an appeal under this section include all matters that the court considers relevant, including—
  - (a) matters of which the Administrator was unaware when he made his decision; and
  - (b) matters which (apart from this subsection) the court would be prevented from having regard to by virtue of rules of court.
- (6) An appeal under this section may be brought in relation to a penalty irrespective of whether a notice of objection under section 130 has been given in respect of that penalty or whether there has been an increase or reduction under that section.
- (7) In this section “the court” means—

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- (a) in England and Wales or Northern Ireland, the High Court; and
- (b) in Scotland, the Court of Session.

#### Commencement Information

**I33** S. 131 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

### 132 Interpretation of Chapter 5 of Part 2

(1) In this Chapter—

“Administrator” means the person appointed by virtue of section 125 as the Administrator for the purposes of provision made by or under this Chapter;

“biofuel” means liquid or gaseous fuel that is produced wholly from biomass;

“blended biofuel” means liquid or gaseous fuel consisting of a blend of biofuel and fossil fuel;

“civil penalty notice” has the meaning given by section 129(2);

“renewable transport fuel” means—

- (a) biofuel;
- (b) blended biofuel;
- (c) any solid, liquid or gaseous fuel (other than fossil fuel or nuclear fuel) which is produced—
  - (i) wholly by energy from a renewable source; or
  - (ii) wholly by a process powered wholly by such energy; or
- (d) any solid, liquid or gaseous fuel which is of a description of fuel designated by an RTF order as renewable transport fuel;

“renewable transport fuel obligation” has the meaning given by section 124(1);

“RTF order” has the meaning given by section 124(3);

“specified” means specified in, or determined in accordance with, an RTF order;

“supply” means, in relation to fuel, the supply of that fuel to any person with a view to its being used (whether by that person or persons to whom it is subsequently supplied) wholly or primarily for transport purposes;

“transport fuel” means—

- (a) renewable transport fuel;
- (b) fossil fuel; or
- (c) any solid, liquid or gaseous fuel that is neither renewable transport fuel nor fossil fuel;

“transport fuel supplier” means a person who, in the course of any business of his, supplies transport fuel at or for delivery to places in the United Kingdom.

(2) For the purposes of this section a process powered by electricity that was generated by energy from a particular source is to be treated as being powered by energy from that source.

(3) For the purposes of this section fuel is used for transport purposes if—

- (a) it is used as fuel for one or more of the following, namely, vehicles, vessels, aircraft, trains or any other mode of transport; or



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(b) it is used for producing fuel that is intended to be so used.

(4) In this section—

“biomass” means the biodegradable portion of a specified product, waste or residue;

“fossil fuel” has the same meaning as in section 32 of the 1989 Act;

“renewable source” means, in relation to energy, any of the following sources of energy—

- (a) wind;
- (b) solar heat;
- (c) water (including waves and tides);
- (d) geothermal sources; or
- (e) biomass.

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**Commencement Information**

**I34** S. 132 in force at 5.10.2004 by [S.I. 2004/2575](#), art. 2(1), [Sch. 1](#)

**Status:**

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