



Energy Act 2004

2004 CHAPTER 20

PART 2

SUSTAINABILITY AND RENEWABLE ENERGY SOURCES

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.

Status: Point in time view as at 05/10/2004. This version of this chapter contains provisions that are not valid for this point in time.

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(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.

Commencement Information

II 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.

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- (7) In this section “subordinate legislation” includes an instrument made under an Act of the Scottish Parliament.

Commencement Information

I2 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—
- (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.

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Commencement Information

I3 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,
- 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.

Commencement Information

I4 S. 87 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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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.

Commencement Information

I5 S. 88 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

Application of 1989 Act offshore

VALID FROM 01/03/2005

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;”.

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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;
 - (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

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- (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 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.

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- (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.

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

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“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.”

VALID FROM 01/03/2005

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 ”;

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- (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.
- (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).

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—

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- (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

I6 S. 94 in force at 5.10.2004 by S.I. 2004/2575, art. 2(1), Sch. 1

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,

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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;
 - (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.

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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
 - (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.

Status: Point in time view as at 05/10/2004. This version of this chapter contains provisions that are not valid for this point in time.

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- (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.
- (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.

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- (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.
- (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

VALID FROM 01/03/2005

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

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- (d) are to be exercisable subject to such restrictions or conditions, or both, as are set out in the declaration.
- (4) A declaration under this section—
 - (a) has effect, in relation to the rights specified or described in it, from the time at which it comes into force; and
 - (b) continues in force for such period as may be specified in the declaration or as may be determined in accordance with provision contained in it.
- (5) A declaration under this section—
 - (a) must identify the renewable energy installations, or proposed renewable energy installations, by reference to which it is made;
 - (b) must specify the date on which it is to come into force, or the means by which that date is to be determined;
 - (c) may modify or revoke a previous such declaration, or a declaration under section 100 of the Energy Act 2004; and
 - (d) may make different provision in relation to different means of exercising a right of navigation.
- (6) Where a declaration is made under this section by 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

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- (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
- (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—

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- (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—
- “(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.”

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—

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- (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—
 - (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.

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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—
 - “(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.”

Commencement Information

I7 [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.

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- (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—

““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

18 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 ”.

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- (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.”
- (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).”

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Commencement Information

19 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—

- (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;

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“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.

(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

I10 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 05/10/2004. This version of this chapter contains provisions that are not valid for this point in time.

Changes to legislation:

Energy Act 2004, Chapter 2 is up to date with all changes known to be in force on or before 01 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.