



Energy Act 2004

2004 CHAPTER 20

PART 4

MISCELLANEOUS AND SUPPLEMENTAL

Supplemental

192 Powers exercisable by statutory instrument

- (1) Every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations is a power exercisable by statutory instrument.
- (2) Where—
 - (a) this Act provides for an Order in Council, order or regulations to be subject to the negative resolution procedure, and
 - (b) a draft of the Order in Council, order or regulations has not been required, in accordance with subsection (3) or any other enactment, to be laid before Parliament and approved by a resolution of each House, or by a resolution of the House of Commons,the statutory instrument containing the Order in Council, order or regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) Where this Act specifies that the power to make any provision by Order in Council or other order is subject to the affirmative resolution procedure, no order under this Act containing that provision (with or without other provision) shall be made unless a draft of the Order in Council or other order has been—
 - (a) laid before Parliament; and
 - (b) approved by a resolution of each House.
- (4) Subject to subsection (5), every power under this Act to make an Order in Council and every power conferred by this Act on the Secretary of State or the Treasury to make an order or regulations includes power—

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- (a) to make different provision for different cases (including different provision in respect of different areas);
 - (b) to make provision subject to such exemptions and exceptions as the person exercising the power thinks fit; and
 - (c) to make such incidental, supplemental, consequential and transitional provision as that person thinks fit.
- (5) Subsection (4) does not apply to—
- (a) the Secretary of State’s power to make an order under section 39(3);
 - (b) the power to make an Order in Council under section 84(4); or
 - (c) so much of the Secretary of State’s power to make an order under section 198 as is exercisable otherwise than by virtue of section 179(4) and (5).

193 Service of notifications and other documents

- (1) This section applies where provision made (in whatever terms) by or under this Act (other than sections 129 to 131 or Chapter 3 of Part 3) authorises or requires—
- (a) a notification to be given to a person; or
 - (b) a document of any other description (including a copy of a document) to be sent to a person.
- (2) The notification or document may be given or sent to the person in question—
- (a) by delivering it to him;
 - (b) by leaving it at his proper address; or
 - (c) by sending it by post to him at that address.
- (3) The notification or document may be given or sent to a body corporate by being given or sent to the secretary or clerk of that body.
- (4) The notification or document may be given or sent to a firm by being given or sent to—
- (a) a partner in the firm; or
 - (b) a person having the control or management of the partnership business.
- (5) The notification or document may be given or sent to an unincorporated body or association by being given or sent to a member of the governing body of the body or association.
- (6) For the purposes of this section and section 7 of the Interpretation Act 1978 (c. 30) (service of documents by post) in its application to this section, the proper address of a person is—
- (a) in the case of a body corporate, the address of the registered or principal office of the body;
 - (b) in the case of a firm, or an unincorporated body or association, the address of the principal office of the firm, body or association;
 - (c) in the case of a person to whom the notification or other document is given or sent in reliance on any of subsections (3) to (5), the proper address of the body corporate, firm or (as the case may be) other body or association in question; and
 - (d) in any other case, the last known address of the person in question.
- (7) In the case of—
- (a) a company registered outside the United Kingdom,

- (b) a firm carrying on business outside the United Kingdom, or
- (c) an unincorporated body or association with offices outside the United Kingdom,

the references in subsection (6) to its principal office include references to its principal office within the United Kingdom (if any).

- (8) In this section “notification” includes notice; and references in this section to sending a document to a person include references to making an application to him.
- (9) This section has effect subject to section 194.

194 Notifications and documents in electronic form

- (1) This section applies where—
 - (a) section 193 authorises the giving or sending of a notification or other document by its delivery to a particular person (“the recipient”); and
 - (b) the notification or other document is transmitted to the recipient—
 - (i) by means of an electronic communications network; or
 - (ii) by other means but in a form that nevertheless requires the use of apparatus by the recipient to render it intelligible.
- (2) The transmission has effect for the purposes of this Act as a delivery of the notification or other document to the recipient, but only if the requirements imposed by or under this section are complied with.
- (3) Where the recipient is the NDA—
 - (a) it must have indicated its willingness to receive the notification or other document in a manner mentioned in subsection (1)(b);
 - (b) the transmission must be made in such manner, and satisfy such other conditions, as it may require; and
 - (c) the notification or other document must take such form as it may require.
- (4) Where the person making the transmission is the NDA, it may (subject to subsection (5)) determine—
 - (a) the manner in which the transmission is made; and
 - (b) the form in which the notification or other document is transmitted.
- (5) Where the recipient is a person other than the NDA—
 - (a) the recipient, or
 - (b) the person on whose behalf the recipient receives the notification or other document,must have indicated to the person making the transmission the recipient’s willingness to receive notifications or documents transmitted in the form and manner used.
- (6) An indication to any person for the purposes of subsection (5)—
 - (a) must be given to that person in such manner as he may require;
 - (b) may be a general indication or one that is limited to notifications or documents of a particular description;
 - (c) must state the address to be used and must be accompanied by such other information as that person requires for the making of the transmission; and
 - (d) may be modified or withdrawn at any time by a notice given to that person in such manner as he may require.

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- (7) An indication, requirement or determination given, imposed or made by the NDA for the purposes of this section is to be given, imposed or made by being published in such manner as it considers appropriate for bringing it to the attention of the persons who, in its opinion, are likely to be affected by it.
- (8) Subsection (8) of section 193 applies for the purposes of this section as it applies for the purposes of that section.

195 Timing and location of things done electronically

- (1) The Secretary of State may, by order, make provision specifying, for the purposes of any enactment or subordinate legislation contained in or made under this Act, the manner of determining—
 - (a) the times at which things done under that enactment or subordinate legislation by means of electronic communications networks are done; and
 - (b) the places at which such things are so done, and at which things transmitted by means of such networks are received.
- (2) The provision made by subsection (1) may include provision as to the country or territory in which an electronic address is to be treated as located.
- (3) An order made by the Secretary of State may also make provision about the manner of proving in any legal proceedings—
 - (a) that something done by means of an electronic communications network satisfies the requirements of an enactment or subordinate legislation contained in or made under this Act for the doing of that thing; and
 - (b) the matters mentioned in subsection (1)(a) and (b).
- (4) An order under this section may provide for such presumptions to apply (whether conclusive or not) as the Secretary of State considers appropriate.
- (5) An order under this section is subject to the negative resolution procedure.

196 General interpretation

- (1) In this Act—
 - “the 1965 Act” means the Nuclear Installations Act 1965 (c. 57);
 - “the 1989 Act” means the Electricity Act 1989 (c. 29);
 - “the 1993 Act” means the Radioactive Substances Act 1993 (c. 12);
 - “affirmative resolution procedure” is to be construed in accordance with section 192(3);
 - “BNFL” means the Nuclear Fuels Company (within the meaning of the Atomic Energy Authority Act 1971 (c. 11));
 - “contravention” includes a failure to comply, and cognate expressions are to be construed accordingly;
 - “documents” includes accounts, drawings, written representations and records of any description;
 - “electronic communications network” has the same meaning as in the Communications Act 2003 (c. 21);
 - “enactment” includes Acts of the Scottish Parliament and Northern Ireland legislation;

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“financial year” means a period of twelve months ending with 31st March;

“GEMA” means the Gas and Electricity Markets Authority;

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“the NDA” means the Nuclear Decommissioning Authority established by section 1;

“negative resolution procedure” is to be construed in accordance with section 192(2);

“nuclear site licence” has the same meaning as in the 1965 Act;

“nuclear transfer scheme” means a scheme under section 38;

“pensions, allowances or gratuities” is to be construed in accordance with subsection (2);

“securities”, in relation to a body corporate, includes shares, debentures, debenture stock, bonds and other securities of the body corporate, whether or not constituting a charge on the assets of the body corporate;

“shares” includes stock;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30);

“subsidiary” and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985 (c. 6);

“the UKAEA” means the United Kingdom Atomic Energy Authority.

(2) In this Act—

- (a) references to pensions, allowances or gratuities include references to any similar benefits provided on death or retirement; and
- (b) references to the payment of pensions, allowances or gratuities to or in respect of a person include references to the making of payments towards the provision of the payment of pensions, allowances or gratuities to or in respect of that person.

197 Repeals etc.

(1) In the Atomic Energy Authority Act 1971 (c. 11), the following provisions shall cease to have effect—

- (a) section 4(1) (BNFL to make property etc. available to the UKAEA); and
- (b) section 11(1) to (3) (provisions as to shares in BNFL and the Radiochemical Company).

(2) In section 11(4) of that Act (subscription for shares by the Secretary of State), for “either of the companies” substitute “the Nuclear Fuels Company”.

(3) In section 12(1) of that Act (loans to BNFL and the Radiochemical Company), for “either of the companies” and “the company to which the loan is made” substitute, respectively, “the Nuclear Fuels Company” and “that Company”.

(4) In section 20 of that Act, subsection (4) (powers to exclude employees of BNFL and Amersham from the UKAEA pension scheme) shall cease to have effect.

(5) In section 1(1) of the Nuclear Industry (Finance) Act 1977 (c. 7) (Government guarantees for BNFL and the Radiochemical Company), the words “or The Radiochemical Centre Limited (“T.R.C.L.”)” shall cease to have effect.

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- (6) In subsection (1) of section 2 of that Act (financial limits)—
 - (a) for the words from “financial limits” to “B.N.F.L.,” substitute “financial limit applicable to B.N.F.L. is”;
 - (b) paragraph (b) and the word “and” immediately preceding it shall cease to have effect; and
 - (c) for “either company” substitute “the company”.
- (7) In subsection (2) of that section for “either of the two companies” substitute “B.N.F.L.”.
- (8) In section 11A(10) of the 1989 Act, in paragraph (b) of the definition of “relevant licence holder”, the words “(by virtue of anything done under section 33(2) of the Utilities Act 2000)” shall cease to have effect.
- (9) The enactments in Part 1 of Schedule 23 (which include some that are spent) are repealed to the extent shown in the second column of that Part of that Schedule.
- (10) Those repeals have effect subject to the provisions set out in Part 2 of that Schedule.

198 Short title, commencement and extent

- (1) This Act may be cited as the Energy Act 2004.
- (2) This Act (apart from this section) shall come into force on such day as the Secretary of State may by order appoint; and different days may be appointed for different purposes.
- (3) Subject to subsection (4) of this section, this Act extends to Northern Ireland.
- (4) The following provisions of this Act do not extend to Northern Ireland—
 - (a) Chapter 3 of Part 1 (with the exception of section 59 and paragraphs 1, 5, 6, 8, 10(1) and (2) and 11 of Schedule 14);
 - (b) so much of Part 2 as amends the 1989 Act;
 - (c) sections 82, 90, 91 and 100; and
 - (d) Part 3 (with the exception of section 151(5)).