

# ENERGY ACT 2008

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## EXPLANATORY NOTES

### *Chapter 2: Importation and Storage of Combustible Gas*

#### **Commentary on Sections Enforcement**

#### *Section 8: Offence to carry on unlicensed activities*

30. *Subsection (1)* makes it an offence for a person to carry on any activity listed in section 2 unless that person has a licence, or is a person (such as a contractor or sub-contractor) who carries on the relevant activity on behalf of a person with a licence. However, by *subsection (3)*, this is subject to the exception provided by section 3. *Subsection (2)* makes it an offence to cause or permit another person to commit the offence (for instance, by getting a contractor to do so). *Subsection (4)* sets out the penalties for any person found guilty of an offence under this section. These are a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) on summary conviction or an unlimited fine for conviction on indictment.

#### *Section 9: Offences relating to licences*

31. Once a licence has been granted, it will also be an offence to breach certain of its provisions. *Subsection (1)* specifies breaches which will give rise to an offence, and gives the Secretary of State a power to specify by order (subject to negative resolution procedure – see section 105) further kinds of breaches that will amount to an offence. Other enforcement powers will be available in respect of breaches of licences which are not criminal offences: see in particular section 10. The breaches attracting criminal penalties under the present section include:
- the carrying on of an activity such as a drilling operation, without first obtaining the prior consent specified by the licence (whether from the Secretary of State or another person whose consent is required);
  - the breach of any conditions attached to such a consent;
  - the failure to keep records, give a notice, or make a return or report, as required by the licence.
32. The licence holder will be liable for offences under the licence, even where the act or omission in question results from the behaviour of, for example, a contractor. However, *subsection (2)* provides that the licence holder will have a valid defence if it can show that it exercised due diligence in trying to avoid committing the relevant offence. In the case where the contractor was responsible for a breach, the licence holder would have to show that it had exercised due diligence in choosing and supervising the behaviour of the contractor.

33. *Subsections (3) and (4)* make it an offence for a person knowingly or recklessly to make a false statement in order to obtain a licence, or any required consent, or to fail to disclose information which that person knows, or ought to know, to be relevant to a licence application or to that consent.
34. *Subsection (5)* sets out the penalties for the offences in *subsections (1), (3) and (4)*: a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) on summary conviction, or an unlimited fine for conviction on indictment.

### ***Section 10: Secretary of State's power of direction***

35. Where there has been a breach of a licence, this section enables the Secretary of State to direct that the licence holder takes appropriate steps to remedy the breach. For example, if the licence requires equipment to be maintained to a good standard, a direction may require the equipment to be repaired or replaced. *Subsection (3)* requires the Secretary of State to consult the licence holder before a direction is given.
36. If the licence holder fails to comply with the direction, the Secretary of State may, under *subsections (4) to (8)*, ensure that the necessary action is taken, at the expense of the licence holder and (if so directed) with the latter's assistance.
37. *Subsection (9)* ensures that this section does not affect any provision made by the licence itself for its enforcement (for instance, the licence may itself give the Secretary of State powers of direction in certain circumstances).

### ***Section 11: Failure to comply with a direction under section 10***

38. *Subsection (1)* of this section provides that a failure to comply with a direction under section 10 is a criminal offence, unless the accused proves due diligence was exercised in trying to avoid committing the offence. The penalties are set out in *subsection (2)*: a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) on summary conviction, or an unlimited fine for conviction on indictment.

### ***Section 12: Injunctions restraining breaches of section 2(1)***

39. This section gives the Secretary of State the power to apply to the court for an injunction to prevent, or require the cessation of, activities prohibited by section 2(1). For example, where there is evidence that a gas unloading activity is taking place without a licence, the Secretary of State may apply for an injunction requiring the operator to cease the activity until a licence is obtained. This power is in addition to any other powers the Secretary of State may have under this Chapter.

### ***Section 13: Inspectors***

40. *Subsections (1) and (2)* of this section allow the Secretary of State to appoint persons to act as inspectors to assist in carrying out the Secretary of State's functions under this Chapter, and enable the inspectors to be remunerated.
41. *Subsection (3)* gives the Secretary of State the power to make regulations (subject to negative resolution procedure – see section 105) setting out the powers and duties of the inspectors and of any other person acting on the directions of the Secretary of State in connection with a function under this Chapter (such persons may include, for example, surveyors or other contractors instructed by the Secretary of State). These are likely to include, for example, powers of entry and investigation and the right to take samples. *Subsection (5)* enables such regulations to create criminal offences (for example it might be an offence to obstruct an inspector in the exercise of functions under the regulations). Such offences will attract the penalty of a fine of up to the statutory maximum (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland) or such lesser

*These notes refer to the Energy Act 2008 (c.32)  
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amount as is specified in the regulations, on summary conviction, or an unlimited fine on conviction on indictment.

***Section 14: Criminal proceedings***

42. *Subsection (1)* ensures that an offence arising by virtue of the provisions of this Chapter may be prosecuted in any part of the United Kingdom, regardless of the offshore location at which the offence may have been committed.
43. *Subsections (3) and (4)* ensure that prosecutions for such offences alleged to have been committed in a controlled place (i.e. within the territorial sea or a Gas Importation and Storage Zone) may be brought only by the Secretary of State (or by a person authorised by the Secretary of State), or by or with the consent of the Director of Public Prosecutions (or the Director of Public Prosecutions for Northern Ireland). Such provision is unnecessary in relation to Scotland as there all prosecutions are brought by or on behalf of the Lord Advocate. *Subsection (5)* provides that the same restrictions will apply to any prosecution for an offence created by regulations under section 13 except that references to a person authorised by the Secretary of State are to be read as references to an inspector.