



# Energy Act 2008

## 2008 CHAPTER 32

### PART 2

#### ELECTRICITY FROM RENEWABLE SOURCES

##### *The renewables obligation*

### 37 The renewables obligation

For sections 32 to 32C of the Electricity Act 1989 (c. 29) substitute—

#### **“32 The renewables obligation**

- (1) The relevant minister may make a renewables obligation order.
- (2) “The relevant minister” means—
  - (a) in the case of Scotland, the Scottish Ministers,
  - (b) in any other case, the Secretary of State.
- (3) In subsection (2) “Scotland” includes—
  - (a) so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, and
  - (b) a Renewable Energy Zone, or any part of such a Zone, which is designated by order under section 84(5) of the Energy Act 2004 (areas in relation to which Scottish Ministers have functions).
- (4) A renewables obligation order is an order which imposes the renewables obligation on each electricity supplier falling within a specified description (a “designated electricity supplier”).
- (5) The descriptions of electricity supplier upon which a renewables obligation order may impose the renewables obligation are those supplying electricity to customers in the relevant part of Great Britain, excluding such categories of supplier (if any) as are specified.

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- (6) The renewables obligation is that the designated electricity supplier must, by each specified day, have produced to the Authority the required number of renewables obligation certificates in respect of the amount of electricity supplied by it during a specified period to customers in the relevant part of Great Britain.
- (7) Subsection (6) is subject to sections 32A to 32M.

### **32A Further provision about the renewables obligation**

- (1) A renewables obligation order may make provision generally in relation to the renewables obligation.
- (2) A renewables obligation order may, in particular, specify—
- (a) how the number of renewables obligation certificates required to be produced by an electricity supplier in respect of the amount of electricity supplied by it to customers in the relevant part of Great Britain during a specified period is to be calculated;
  - (b) different obligations for successive periods of time;
  - (c) that renewables obligation certificates issued in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating stations,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances,
 are to count towards discharging an electricity supplier's obligation only up to a specified number, or a specified proportion, of the certificates required to be produced to discharge the obligation;
  - (d) that a specified number, or a specified proportion, of the renewables obligation certificates produced by an electricity supplier when discharging its renewables obligation must be certificates in respect of electricity generated—
    - (i) using specified descriptions of renewable sources,
    - (ii) by specified descriptions of generating station,
    - (iii) in specified ways, or
    - (iv) in other specified cases or circumstances;
  - (e) how the amount of electricity supplied by an electricity supplier to customers in the relevant part of Great Britain during a specified period is to be calculated;
  - (f) that specified information, or information of a specified nature, is to be given to the Authority;
  - (g) the form in which such information is to be given and the time by which it is to be given.
- (3) A renewables obligation certificate may count once only towards the discharge of the renewables obligation.
- (4) Except as provided by a renewables obligation order, a renewables obligation certificate counts towards discharging the renewables obligation regardless of whether the order under which it is issued is made by the Secretary of State or the Scottish Ministers.

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- (5) A renewables obligation order may specify that the only renewables obligation certificates which count towards discharging the renewables obligation are certificates which are issued—
- (a) in respect of electricity supplied to customers in the relevant part of Great Britain, or
  - (b) in respect of electricity used in a permitted way (within the meaning of section 32B(9) and (10)) in that part of Great Britain.
- (6) A renewables obligation order may, in relation to any specified period (“the current period”)—
- (a) provide that renewables obligation certificates in respect of electricity supplied in a later period may, when available, be counted towards discharging the renewables obligation for the current period;
  - (b) provide that renewables obligation certificates in respect of electricity supplied in the current period may, in a later period, be counted towards discharging the renewables obligation for that period;
  - (c) specify how much later the later period referred to in paragraph (a) or (b) may be;
  - (d) specify a maximum proportion of the renewables obligation for any period which may be discharged as mentioned in paragraph (a) or (b);
  - (e) specify a maximum proportion, or maximum number of, the renewables obligation certificates issued in respect of electricity supplied in any period which may be counted towards discharging the renewables obligation for a different period.
- (7) For the purposes of subsection (6) a certificate which certifies that electricity has been used in a permitted way (within the meaning of section 32B(9) and (10)) in a particular period is to be treated as if it were a certificate which certifies that electricity has been supplied in that period.

### **32B Renewables obligation certificates**

- (1) A renewables obligation order may provide for the Authority to issue from time to time, in accordance with such criteria (if any) as are specified in the order, a certificate (“a renewables obligation certificate”) to—
- (a) the operator of a generating station,
  - (b) an electricity supplier or a Northern Ireland supplier, or
  - (c) if the order so provides, a person of any other description specified in the order.
- (2) A renewables obligation certificate is to certify—
- (a) the matters within subsection (3) or (4), or
  - (b) if the order provides that a certificate may certify the matters within subsection (5), (6), (7) or (8), the matters within that subsection.
- (3) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and

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- (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (4) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, 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 by a Northern Ireland supplier to customers in Northern Ireland.
- (5) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that it has been supplied by an electricity supplier to customers in Great Britain (or the part of Great Britain stated in the certificate).
- (6) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate,
  - (b) that none of them is a generating station mentioned in Article 54(1) of the Energy (Northern Ireland) Order 2003, and
  - (c) that the electricity has been supplied by a Northern Ireland supplier to customers in Northern Ireland.
- (7) The matters within this subsection are—
- (a) that the generating station, or, in the case of a certificate issued otherwise than to the operator of a generating station, a generating station specified in the certificate, has generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (8) The matters within this subsection are—
- (a) that two or more generating stations have, between them, generated from renewable sources the amount of electricity stated in the certificate, and
  - (b) that the electricity has been used in a permitted way.
- (9) For the purposes of subsections (7) and (8), electricity generated by a generating station, or generating stations, of any description is used in a permitted way if—
- (a) it is used in one of the ways mentioned in subsection (10), and
  - (b) that way is specified in the order as a permitted way—
    - (i) in relation to all generating stations, or
    - (ii) in relation to generating stations of that description.
- (10) Those ways are—

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- (a) being consumed by the operator of the generating station or generating stations by which it was generated;
  - (b) being supplied to customers in Great Britain through a private wire network;
  - (c) being provided to a distribution system or a transmission system in circumstances in which its supply to customers cannot be demonstrated;
  - (d) being used, as respects part, as mentioned in one of paragraph (a), (b) or (c) and as respects the remainder—
    - (i) as mentioned in one of the other paragraphs, or
    - (ii) as respects part, as mentioned in one of the other paragraphs and as respects the remainder as mentioned in the other;
  - (e) being used, as respects part, as mentioned in paragraph (a), (b), (c) or (d) and as respects the remainder by being supplied by an electricity supplier to customers in Great Britain or by a Northern Ireland supplier to customers in Northern Ireland, or both.
- (11) For the purposes of subsection (10)(b) electricity is supplied through a private wire network if it is conveyed to premises by a system which is used for conveying electricity from a generating station in circumstances where—
- (a) the operator of the generating station is exempt from section 4(1)(c) and does not hold a supply licence, and
  - (b) the electricity is supplied to one or more customers—
    - (i) by the operator directly, or
    - (ii) by a person to whom the operator supplies the electricity, being a person who is exempt from section 4(1)(c) and does not hold a supply licence.
- (12) In this section “generating station”—
- (a) in the case of an order made by the Scottish Ministers, means a generating station which is situated in Scotland;
  - (b) in the case of an order made by the Secretary of State, means a generating station which is not situated in Scotland.
- (13) For this purpose “Scotland” is to be construed in accordance with section 32(3).

### **32C Section 32B: supplemental provision**

- (1) A renewables obligation order may provide—
- (a) that no renewables obligation certificates are to be issued in respect of electricity generated in specified cases or circumstances, or
  - (b) that renewables obligation certificates are to be issued in respect of a proportion only of the electricity generated in specified cases or circumstances.
- (2) In particular, provision made by virtue of subsection (1) may specify—
- (a) electricity generated using specified descriptions of renewable sources,
  - (b) electricity generated by specified descriptions of generating station, or
  - (c) electricity generated in specified ways.
- (3) Provision made by virtue of subsection (1)(b) may include—

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- (a) provision about how the proportion is to be determined;
  - (b) provision about what, subject to such exceptions as may be specified, constitutes sufficient evidence of any matter required to be established for the purpose of determining that proportion;
  - (c) provision authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
    - (ii) for the results of that analysis to be made available to the Authority.
- (4) In the case of electricity generated by a generating station fuelled or driven—
- (a) partly by renewable sources, and
  - (b) partly by fossil fuel (other than waste which constitutes a renewable source),
- only the proportion attributable to the renewable sources is to be regarded as generated from such sources.
- (5) A renewables obligation order may specify—
- (a) how the proportion referred to in subsection (4) is to be determined, and
  - (b) the consequences for the issuing of renewables obligation certificates if a generating station of the type mentioned in that subsection uses more than a specified proportion of fossil fuel during a specified period.
- (6) Those consequences may include the consequence that no certificates are to be issued in respect of any of the electricity generated by that generating station during that period.
- (7) A renewables obligation order may specify circumstances in which the Authority may revoke a renewables obligation certificate before its production for the purposes of the renewables obligation.
- (8) A renewables obligation order must—
- (a) prohibit the issue of a renewables obligation certificate certifying matters within section 32B(4) or (6) 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
  - (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 the renewables obligation.
- (9) References in section 32B and this section to the supply of electricity to customers in Northern Ireland are to be construed in accordance with the definition of “supply” in Article 3 of the Electricity (Northern Ireland) Order 1992.

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### **32D Amounts of electricity specified in certificates**

- (1) A renewables obligation order may specify the amount of electricity to be stated in each renewables obligation certificate, and different amounts may be specified in relation to different cases or circumstances.
- (2) In particular, different amounts may be specified in relation to—
  - (a) electricity generated from different renewable sources;
  - (b) electricity generated by different descriptions of generating station;
  - (c) electricity generated in different ways.
- (3) In this section “banding provision” means provision made in a renewables obligation order by virtue of subsection (1).
- (4) Before making any banding provision, the relevant minister must have regard to the following matters—
  - (a) the costs (including capital costs) associated with generating electricity from each of the renewable sources or with transmitting or distributing electricity so generated;
  - (b) the income of operators of generating stations in respect of electricity generated from each of those sources or associated with the generation of such electricity;
  - (c) the effect of paragraph 19 of Schedule 6 to the Finance Act 2000 (c. 17) (supplies of electricity from renewable sources exempted from climate change levy) in relation to electricity generated from each of those sources;
  - (d) the desirability of securing the long term growth, and economic viability, of the industries associated with the generation of electricity from renewable sources;
  - (e) the likely effect of the proposed banding provision on the number of renewables obligation certificates issued by the Authority, and the impact this will have on the market for such certificates and on consumers;
  - (f) the potential contribution of electricity generated from each renewable source to the attainment of any target which relates to the generation of electricity or the production of energy and is imposed by, or results from or arises out of, a Community obligation.
- (5) For the purposes of subsection (4)(a), the costs associated with generating electricity from a renewable source include any costs associated with the production or supply of heat produced in connection with that generation.
- (6) For the purposes of subsection (4)(b), an operator's income associated with the generation of electricity from a renewable source includes any income connected with—
  - (a) the acquisition of the renewable source;
  - (b) the supply of heat produced in connection with the generation;
  - (c) the disposal of any by-product of the generation process.
- (7) After the first order containing banding provision is made by the relevant minister, no subsequent order containing such provision may be made by that minister except following a review held by virtue of subsection (8).

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- (8) A renewables obligation order—
- (a) may authorise the relevant minister to review the banding provision at such intervals as are specified in or determined in accordance with the order, and
  - (b) may authorise the relevant minister to review the whole or any part of the banding provision at any time when that minister is satisfied that one or more of the specified conditions is satisfied.

### **32E Section 32D: transitional provision and savings**

- (1) This section applies where a renewables obligation order contains banding provision.
- (2) The order may provide for the effect of any banding provision made in an earlier order, or of any provision of a pre-commencement order, to continue, in such circumstances as may be specified, in relation to—
  - (a) the electricity generated by generating stations of such a description as may be specified, or
  - (b) so much of that electricity as may be determined in accordance with the order.
- (3) For the purposes of subsection (2) “pre-commencement order” means an order made under section 32 before the coming into force of this section.
- (4) Subsection (6) applies to a generating station in respect of which a statutory grant has been awarded if—
  - (a) the generating station is of a specified description, or
  - (b) the circumstances of the case meet specified requirements.
- (5) The requirements specified under subsection (4)(b) may relate to the time when the grant was awarded (whether a time before or after the coming into force of this section).
- (6) A renewables obligation order which contains banding provision may provide for the operation of that provision in relation to electricity generated by a generating station to which this subsection applies to be conditional upon the operator of the station agreeing—
  - (a) if the grant or any part of it has been paid, to repay to the Secretary of State the whole or a specified part of the grant or part before the repayment date,
  - (b) to pay to the Secretary of State interest on an amount repayable under paragraph (a) for such period, and at such rate, as may be determined by the Secretary of State, and
  - (c) if the grant or any part of it has not yet been paid, to consent to the cancellation of the award of the grant or part.
- (7) If the grant in respect of which an amount falls to be paid under paragraph (a) or (b) of subsection (6) was paid by the Scottish Ministers, the references in those paragraphs to the Secretary of State are to be read as references to those Ministers.
- (8) For the purposes of subsection (6)—



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- (a) “the repayment date” means the date specified in or determined in accordance with the order, and
- (b) the period for which interest is payable must not begin before the grant was paid or, if the repayment relates to an instalment of the grant, before the instalment was paid;

and, for the purposes of provision made under that subsection, a renewables obligation order may make provision about the cancellation of an award of a statutory grant or an instalment of such a grant.

- (9) In this section “statutory grant” means—
  - (a) a grant awarded under section 5(1) of the Science and Technology Act 1965 (grants to carry on or support scientific research), or
  - (b) any other grant which is payable out of public funds and awarded under or by virtue of an Act.
- (10) This section is without prejudice to section 32K(1)(b) (power for renewables obligation order to include transitional provision and savings).

### **32F Use of renewables obligation certificates issued in Northern Ireland**

- (1) A renewables obligation order 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 under Article 52 of that Order (renewables obligations for Northern Ireland suppliers).

### **32G Payment as alternative to complying with renewables obligation order**

- (1) A renewables obligation order may provide—
  - (a) that an electricity supplier may (in whole or in part) discharge its renewables obligation by making a payment to the Authority before the last discharge day, and
  - (b) that an electricity supplier's renewables obligation that was not discharged in whole or in part before the last discharge day 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 Authority before the end of the late payment period.
- (2) The order may make provision—
  - (a) as to the sum which for the purposes of subsection (1) is to correspond to a renewables obligation certificate,
  - (b) 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 last discharge day;

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- (c) for different sums or rates falling within paragraph (a) or (b) in relation to different periods;
  - (d) for different such sums or rates in relation to electricity generated in different cases or circumstances specified in the order (including those of a kind referred to in section 32A(2)(c));
  - (e) for any such sum or rate to be adjusted from time to time for inflation by a method specified in the order.
- (3) The method specified under subsection (2)(e) may, in particular, refer to a specified scale or index (as it may have effect from time to time) or to other specified data of any description.
- (4) A renewables obligation order 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 last discharge day) 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.
- (5) A renewables obligation order 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.
- (6) A renewables obligation order may not by virtue of subsection (5) 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 (4) 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 the taking of steps in relation to contraventions of Northern Ireland obligations for that period.
- (7) The provision that may be made by virtue of subsection (5) 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

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- (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 the person were a licence holder.
- (8) References in this section to an electricity supplier's renewables obligation include references to its renewables obligation in relation to a particular period.
- (9) For the purposes of this section, 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 if, and to the extent that, the Authority would have received more by way of discharge payments if every renewables obligation for that period, so far as it was not otherwise discharged, had been discharged by payment.
- (10) For the purposes of this section 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, that authority would have received more by way of discharge payments if every Northern Ireland obligation for that period, so far as not otherwise discharged, had been discharged by payment.
- (11) In this section—
- “discharge payment”, in relation to a period, means—
- (a) a payment by virtue of subsection (1)(a) 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 subsection (1)(b) 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 last discharge day, 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;
- “last discharge day” means the day specified as the day by which renewables obligation certificates must be produced for the purposes of section 32(6);
- “late payment period” means such period beginning with the last discharge day as may be specified;
- “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
- (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.

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### **32H Allocation of amounts to electricity suppliers**

- (1) The amounts received by the Authority by virtue of section 32G must be paid by it to electricity suppliers in accordance with a system of allocation specified in a renewables obligation order.
- (2) Subsection (1) does not apply to those amounts to the extent that they are used by the Authority under section 32I.
- (3) The system of allocation specified in the order may provide for payments to specified categories of electricity supplier only.
- (4) That system may also provide for the postponement of a requirement to make payments to electricity suppliers of amounts received by the Authority under section 32G(1)(b) if, at the time the payments would otherwise fall to be made, the aggregate of the amounts so received (and not used under section 32I or already paid under subsection (1)) is less than an amount specified in the order.
- (5) The references in this section to electricity suppliers include references to Northern Ireland suppliers.

### **32I Costs of the Authority and the Northern Ireland authority**

- (1) A renewables obligation order may provide for amounts received by the Authority by virtue of section 32G to be used by the Authority—
  - (a) to make payments into the Consolidated Fund in respect of costs (or a proportion of costs) which have been or are expected to be incurred by the Authority in connection with the performance of its functions conferred by or under sections 32 to 32M, or
  - (b) to make payments to the Northern Ireland authority in respect of costs (or a proportion of costs) which have been or are expected to be incurred by that authority in connection with the performance of its functions conferred by or under Articles 52 to 55 of the Energy (Northern Ireland) Order 2003.
- (2) A renewables obligation order—
  - (a) may exclude amounts of a specified description from being used as mentioned in subsection (1);
  - (b) may prevent the Authority using amounts to make payments in respect of costs of a specified description.

### **32J Information**

- (1) A renewables obligation order may provide for the Authority to require—
  - (a) an electricity supplier to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether the supplier is discharging, or has discharged, its renewables obligation;
  - (b) a person to provide the Authority with information, or with information of a particular kind, which in the Authority's opinion is relevant to the question whether a renewables obligation certificate is, or was or will in future be, required to be issued to the person.

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- (2) That information must be given to the Authority in whatever form it requires.
- (3) A renewables obligation order may—
  - (a) require operators of generating stations generating electricity (wholly or partly) from biomass to give specified information, or information of a specified kind, to the Authority;
  - (b) specify what, for this purpose, constitutes “biomass”;
  - (c) require the information to be given in a specified form and within a specified period;
  - (d) authorise or require the Authority to postpone the issue of certificates under section 32B to the operator of a generating station who fails to comply with a requirement imposed by virtue of paragraph (a) or (c) until such time as the failure is remedied;
  - (e) authorise or require the Authority to refuse to issue certificates to such a person or to refuse to issue them unless the failure is remedied within a prescribed period.
- (4) The Authority may publish information obtained by virtue of subsection (3).
- (5) No person is required by virtue of this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.

### **32K Renewables obligation order: general provision**

- (1) A renewables obligation order may—
  - (a) make further provision as to the functions of the Authority in relation to the matters dealt with by the order;
  - (b) make transitional provision and savings;
  - (c) provide for anything falling to be calculated or otherwise determined under the order to be calculated or determined by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the order;
  - (d) make different provision for different cases or circumstances.
- (2) Provision made by virtue of subsection (1)(b) may, in particular, include provision about the treatment of certificates issued under section 32B before the substitution of that section by section 37 of the Energy Act 2008.
- (3) Provision made by virtue of subsection (1)(d) may, in particular, make—
  - (a) different provision in relation to different suppliers;
  - (b) different provision in relation to generating stations of different descriptions;
  - (c) different provision in relation to different localities.
- (4) In subsection (3) “supplier” means an electricity supplier or a Northern Ireland supplier.

### **32L Renewables obligation orders: procedure**

- (1) Before making a renewables obligation order, the relevant minister must consult—

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

- (a) the Authority,
  - (b) the Council,
  - (c) the electricity suppliers to whom the proposed order would apply,
  - (d) such generators of electricity from renewable sources as the relevant minister considers appropriate, and
  - (e) such other persons, if any, as the relevant minister considers appropriate.
- (2) A renewables obligation order is not to be made by the Secretary of State unless a draft of the instrument containing it has been laid before and approved by a resolution of each House of Parliament.
- (3) A renewables obligation order is not to be made by the Scottish Ministers unless a draft of the instrument containing it has been laid before and approved by a resolution of the Scottish Parliament.

### **32M Interpretation of sections 32 to 32M**

- (1) In this section and sections 32 to 32L—
- “banding provision” is to be construed in accordance with section 32D(3);
- “fossil fuel” means—
- (a) coal,
  - (b) lignite,
  - (c) natural gas (within the meaning of the Energy Act 1976),
  - (d) crude liquid petroleum,
  - (e) petroleum products (within the meaning of that Act), or
  - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);
- “generated” means generated at any place whether situated in the United Kingdom or elsewhere, and cognate expressions are to be construed accordingly;
- “Northern Ireland authority” means the Northern Ireland Authority for Utility Regulation;
- “Northern Ireland supplier” means an electricity supplier within the meaning of Part 7 of the Energy (Northern Ireland) Order 2003;
- “the relevant minister” has the meaning given by section 32;
- “the relevant part of Great Britain” means—
- (a) in the case of a renewables obligation order made by the Secretary of State, England and Wales (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to England or Wales);
  - (b) in the case of a renewables obligation order made by the Scottish Ministers, Scotland (including so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland);
- “the renewables obligation” is to be construed in accordance with section 32(4);
- “renewables obligation certificate” is to be construed in accordance with section 32B;

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*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

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“renewables obligation order” is to be construed in accordance with section 32;

“renewable sources” means sources of energy other than fossil fuel or nuclear fuel, but includes waste of which not more than a specified proportion is waste which is, or is derived from, fossil fuel;

“specified”, in relation to a renewables obligation order, means specified in the order.

- (2) For the purposes of the definition of “renewable sources”, a renewables obligation order may make provision—
  - (a) about what constitutes “waste”;
  - (b) about how the proportion of waste which is, or is derived from, fossil fuel is to be determined;
  - (c) about what, subject to such exceptions as may be specified, constitutes sufficient evidence of that proportion in any particular case;
  - (d) authorising the Authority, in specified circumstances, to require an operator of a generating station to arrange—
    - (i) for samples of any fuel used (or to be used) in the generating station, or of any gas or other substance produced as a result of the use of such fuel, to be taken by a person, and analysed in a manner, approved by the Authority, and
    - (ii) for the results of that analysis to be made available to the Authority.
- (3) For the purposes of the definition of “the relevant part of Great Britain”, the territorial sea adjacent to England is the territorial sea adjacent to the United Kingdom, other than the territorial sea adjacent to Scotland, Wales or Northern Ireland.
- (4) An Order in Council under section 126(2) of the Scotland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section and sections 32 to 32L if, or to the extent that, the Order is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (5) An order or Order in Council made under or by virtue of section 158(3) or (4) of the Government of Wales Act 2006 (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the order or Order in Council is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.
- (6) An Order in Council under section 98(8) of the Northern Ireland Act 1998 (c. 46) (apportionment of sea areas) has effect for the purposes of this section if, or to the extent that, the Order is expressed to apply—
  - (a) by virtue of this subsection, for those purposes, or
  - (b) if no provision has been made by virtue of paragraph (a), for the general or residual purposes of that Act.

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

- (7) A renewables obligation order may make provision, for the purposes of sections 32 to 32L, about the circumstances in which electricity is to be regarded as having been supplied—
- (a) to customers in Great Britain;
  - (b) to customers in the relevant part of Great Britain;
  - (c) to customers in Northern Ireland.”

#### Commencement Information

- I1** S. 37 partly in force; s. 37 in force for certain purposes at Royal Assent, see s. 110(1)(a)  
**I2** S. 37 in force at 1.4.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 3\(a\)](#) (with [art. 5](#))

### 38 Section 37: supplemental provision

- (1) In the case of an order made under section 32 of the Electricity Act 1989 (c. 29) after the commencement of section 37, the requirements of section 32L(1) of that Act (as substituted by section 37) may be satisfied by consultation undertaken before that commencement or the passing of this Act.
- (2) Where a NI amending order is made, the Secretary of State may, by order—
- (a) make consequential amendments to any reference to a provision of the NI Energy Order contained in sections 32 to 32M of the Electricity Act 1989 (as substituted by section 37);
  - (b) amend section 32K(2) of that Act (as so substituted) so as to extend it to certificates issued before the relevant time by the Northern Ireland Authority for Utility Regulation under provision included, by virtue of Article 54 of the NI Energy Order, in an order made under Article 52 of that Order.
- (3) In this section—
- “NI amending order” means an order under Article 56 of the NI Energy Order which (by virtue of section 40(2)) makes amendments to Part 7 of that Order to take account of any amendments made or proposed to be made by section 37;
- “NI Energy Order” means the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- “the relevant time” means the time when the first order made under Article 52 of the NI Energy Order by virtue of a NI amending order comes into force.

#### Commencement Information

- I3** S. 38 partly in force; s. 38(1) in force at Royal Assent, see s. 110(1)(a)  
**I4** S. 38(2) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(i\)](#)  
**I5** S. 38(3) in force at 7.3.2009 by [S.I. 2009/559](#), [art. 2](#)

### 39 Existing savings relating to section 32 of the Electricity Act 1989

In section 67 of the Utilities Act 2000 (c. 27) (savings relating to section 32 of the Electricity Act 1989 etc), in subsection (1)(c) for “(as mentioned in that section)



*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

made pursuant to such an order” substitute “ made pursuant to such an order (or such arrangements as modified or replaced by virtue of an order under this section) ”.

**Commencement Information**

**I6** S. 39 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(ii\)](#)

#### **40 The Northern Ireland renewables obligation**

(1) In section 121 of the Energy Act 2004 (c. 20) (power of Gas and Electricity Markets Authority to act on behalf of Northern Ireland regulator)—

- (a) in subsection (1) for “Energy” substitute “ Utility ”,
- (b) in subsection (2) for “Articles 52” to the end substitute “ the Northern Ireland provisions. ”, and
- (c) after that subsection insert—

“(3) For this purpose “the Northern Ireland provisions” means—

- (a) Articles 52 to 55 of the Energy (Northern Ireland) Order 2003 (renewables obligations for Northern Ireland suppliers), and
- (b) any provision made (whether before or after the passing of the Energy Act 2008) by an order under Article 56 of the Energy (Northern Ireland) Order 2003 which amends Part 7 of that Order.”

(2) In Article 56(1) of the NI Energy Order (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 Electricity Act 1989 (c. 29) includes a reference to section 37 of this Act.

(3) In the case of an order under Article 52 of the NI Energy Order made by virtue of a NI amending order, the requirements of Article 52(6) of the NI Energy Order (consultation before making a renewables order) may be satisfied by consultation undertaken before the NI amending order came into force or the passing of this Act.

(4) In this section “NI amending order” and “NI Energy Order” have the same meaning as in section 38.

**Commencement Information**

**I7** S. 40 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(iii\)](#)

#### *Feed-in tariffs for small-scale generation of electricity*

#### **41 Power to amend licence conditions etc: feed-in tariffs**

(1) The Secretary of State may modify—

- (a) a condition of a particular licence under section 6(1)(c) or (d) of the Electricity Act 1989 (distribution and supply licences);
- (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects  
for the Energy Act 2008, Part 2. (See end of Document for details)*

- (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of—
- (a) establishing, or making arrangements for the administration of, a scheme of financial incentives to encourage small-scale low-carbon generation of electricity;
  - (b) requiring or enabling the holder of a distribution licence to make arrangements for the distribution of electricity generated by small-scale low-carbon generation;
  - (c) requiring the holder of a licence to make arrangements related to the matters mentioned in paragraph (a) or (b).
- (3) Modifications made by virtue of subsection (1) may include—
- (a) provision requiring the holder of a supply licence to make a payment to a small-scale low-carbon generator, or to the Authority for onward payment to such a generator, in specified circumstances;
  - (b) provision specifying how a payment under paragraph (a) is to be calculated;
  - (c) provision for the level of payment under paragraph (a) to decrease year by year in accordance with a formula published, or to be published, by the Secretary of State;
  - (d) provision about the circumstances in which no payment, or a reduced payment, may be made to a small-scale low-carbon generator;
  - (e) provision about the circumstances in which a payment may be recovered from a small-scale low-carbon generator;
  - (f) a requirement for the holder of a supply licence or distribution licence to pay a levy to the Authority at specified times;
  - (g) provision specifying how a levy under paragraph (f) is to be calculated (which may require specified matters to be determined by the Authority or the Secretary of State);
  - (h) provision conferring an entitlement on the holder of a supply licence or distribution licence to receive a payment from the Authority.
- (4) In this section—
- “Authority” means the Gas and Electricity Markets Authority;
- “distribution licence” means a licence under section 6(1)(c) of the Electricity Act 1989 (c. 29);
- “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
- “plant” includes any equipment, apparatus or appliance;
- “small-scale low-carbon generation” means the use, for the generation of electricity, of any plant—
- (a) which, in generating electricity, relies wholly or mainly on a source of energy or a technology mentioned in subsection (5), and
  - (b) the capacity of which to generate electricity does not exceed the specified maximum capacity;

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

“small-scale low-carbon generator” means an owner of plant used or intended to be used for small-scale low-carbon generation, whether or not the person is also operating or intending to operate the plant;

“specified maximum capacity” means the capacity specified by the Secretary of State by order, which must not exceed 5 megawatts;

“supply licence” means a licence under section 6(1)(d) of the Electricity Act 1989 (c. 29).

- (5) The 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 with an electrical capacity of 50 kilowatts or less.
- (6) The Secretary of State may by order modify the list of sources of energy and technologies for the time being listed in subsection (5).
- (7) The power conferred by subsection (1)—
- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplemental, consequential or transitional modifications.
- (8) Provision included in a licence by virtue of that power—
- (a) need not relate to the activities authorised by the licence;
  - (b) may make different provision for different cases.

**Commencement Information**

**18** S. 41 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(iv\)](#)

**42 Power to amend licence conditions etc: procedure**

- (1) Before making a modification, the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

- (3) Before making modifications, the Secretary of State must lay a draft of the modifications before Parliament.
- (4) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (5) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (6) Subsection (4) does not prevent a new draft of proposed modifications being laid before Parliament.
- (7) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (8) In this section, “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (9) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (10) In this section “modification” means a modification under section 41(1).

#### Commencement Information

**I9** S. 42 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(a\)\(iv\)](#)

### 43 Feed-in tariffs: supplemental

- (1) A modification under section 41 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 Electricity Act 1989 (c. 29).
- (2) Where the Secretary of State makes modifications under section 41(1)(b) of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority (“the Authority”) must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State may by order—
  - (a) make provision conferring functions on the Authority or the Secretary of State (or both) in connection with the administration of any scheme established by virtue of section 41;
  - (b) make such modifications of provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made) as the Secretary of State considers appropriate in consequence of provision made under paragraph (a) or section 41.

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

#### Commencement Information

**I10** S. 43 in force at 26.1.2009 by S.I. 2009/45, art. 2(a)(iv)

### *Offshore electricity transmission*

#### **44 Offshore electricity transmission**

(1) Part 1 of the Electricity Act 1989 (electricity supply) is amended as follows.

(2) After section 6C insert—

##### **“6D Section 6C: supplemental provision**

- (1) The provision made by regulations under section 6C(1) may also include—
- (a) provision requiring a person within subsection (2), in relation to a tender exercise, to make payments to the Authority, in prescribed circumstances, in respect of the Authority's tender costs in relation to the exercise;
  - (b) provision requiring a person within subsection (2)(a) (“the relevant person”) in prescribed circumstances—
    - (i) to pay a deposit of a prescribed amount to the Authority, or to provide the Authority with security in a form approved by it, or
    - (ii) to make arrangements for a person approved by the Authority to pay to the Authority such a deposit or provide it with such security,in respect of any liability which the relevant person has, or may in future have, by virtue of paragraph (a);
  - (c) provision requiring the owner of a regulated asset, in a case where a transitional tender exercise has been held, to make a payment of a prescribed amount to the Authority in respect of any costs incurred by the Authority in connection with any assessment of the costs which have been, or ought to have been, incurred in connection with that asset;
  - (d) provision about the times at which payments are to be made under regulations made by virtue of paragraph (a) or (c) or deposits or other forms of security are to be provided under regulations made by virtue of paragraph (b);
  - (e) provision about—
    - (i) the circumstances in which a payment made in accordance with regulations made by virtue of paragraph (a) is to be repaid (wholly or in part);
    - (ii) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
    - (iii) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with

*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

- regulations made by virtue of paragraph (b) is to be released or forfeited (wholly or in part);
- (f) provision about the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this subsection, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (2) The persons within this subsection, in relation to a tender exercise, are—
- (a) the person who made the connection request for the purposes of which the tender exercise has been, is being or is to be, held;
- (b) any person who submits an application for the offshore transmission licence to which the tender exercise relates.
- (3) For the purposes of subsection (2)(a) a person makes a connection request when the person—
- (a) makes an application to the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
- (b) before the coming into force of section 180 of the Energy Act 2004 (meaning of “high voltage line”), makes an application to the holder of a distribution licence (in accordance with any provision made by the licence) for an offer of connection to and use of a system in circumstances where the application is for connection to and use of that system by a system—
- (i) which was a distribution system at the time the application was made (or would have been had it been in existence at that time), and
- (ii) which consists (wholly or mainly) of electric lines of a nominal voltage of 132 kilovolts.
- (4) A person (“P”) is to be treated as within subsection (2)(a) if—
- (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (3) (a) or (b), and
- (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (5) Where regulations are made by virtue of subsection (1)(a) or (b), regulations made by virtue of subsection (1)(e) must ensure that, as soon as reasonably practicable after a tender exercise is finished, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of—
- (a) any fees under section 6A(2) in respect of applications for the offshore transmission licence to which the tender exercise relates,
- (b) any payments made in accordance with regulations made by virtue of subsection (1)(a) and not repaid, and
- (c) the value of any security forfeited in accordance with regulations made by virtue of subsection (1)(e)(iii),
- does not exceed the Authority's tender costs.
- (6) Where regulations under section 6C—
- (a) restrict the making of applications for offshore transmission licences, or

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*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

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- (b) operate so as to prevent an application from being considered or further considered, if the applicant does not meet one or more prescribed requirements,
- such regulations may make provision enabling a person to apply to the Authority for a decision as to the effect of any such restriction or requirement if the person were to make an application for such a licence.
- (7) Regulations made by virtue of subsection (6) may enable the Authority to charge a person who makes such an application a prescribed fee for any decision given in response to it.
- (8) In this section—
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system—
- (a) by means of which the transmission of electricity takes place, and
- (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));
- “offshore transmission licence” has the same meaning as in section 6C;
- “prescribed” has the same meaning as in that section;
- “regulated asset”, in relation to a tender exercise, means an asset which the person granted the offshore transmission licence requires in order to enable that person to comply with the obligations under the licence;
- “successful bidder”, in relation to a tender exercise, means the person to whom, as a result of that exercise, the offshore transmission licence has been, or is to be, granted;
- “tender costs”, in relation to a tender exercise, means—
- (a) any costs incurred or likely to be incurred by the Authority for the purposes of the exercise, and
- (b) such proportion as the Authority considers appropriate of the costs which—
- (i) have been, or are likely to be, incurred by it under or for the purposes of section 6C or of regulations under that section, and
- (ii) are not directly attributable to a particular tender exercise;
- “tender exercise” means the steps taken in accordance with regulations under section 6C with a view to determining to whom a particular offshore transmission licence is to be granted;
- “transitional tender exercise” means a tender exercise in relation to which paragraph 1(1) of Schedule 2A applies.
- (9) Any sums received by the Authority under regulations made by virtue of this section are to be paid into the Consolidated Fund.

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*Status: Point in time view as at 29/07/2010.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 2. (See end of Document for details)*

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## **6E Property schemes in respect of offshore transmission licences**

Schedule 2A (which provides for property schemes in connection with grants of offshore transmission licences) shall have effect.”

(3) In section 64 (interpretation of Part 1), after subsection (1) insert—

“(1A) An electric line is a relevant offshore line for the purposes of the definition in subsection (1) of “high voltage line” if—

- (a) it is wholly or partly in an area of GB internal waters, an area of the territorial sea adjacent to the United Kingdom or an area designated under section 1(7) of the Continental Shelf Act 1964, and
- (b) it is—
  - (i) used to convey electricity to a place in Scotland, or
  - (ii) constructed wholly or mainly for the purpose of conveying, to any other place, electricity generated by a generating station situated in an area mentioned in paragraph (a).

(1AA) In subsection (1A)(a) “GB internal 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 adjacent to Great Britain, but do not form part of that territorial sea.”

(4) Before Schedule 3 insert the Schedule set out in Schedule 2 (property schemes).

### **Commencement Information**

**I11** S. 44(1)(2)(4) in force at 20.5.2009 by [S.I. 2009/1270](#), [art. 2](#)

**I12** S. 44(3) in force at 29.7.2010 for specified purposes by [S.I. 2010/1888](#), [art. 2\(1\)](#)



**Status:**

Point in time view as at 29/07/2010.

**Changes to legislation:**

There are currently no known outstanding effects for the Energy Act 2008, Part 2.