



Energy Act 2008

2008 CHAPTER 32

PART 6

GENERAL

103 Offences by bodies corporate etc

- (1) Where an offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as it applies to an officer of the body corporate.
- (3) Where an offence—
 - (a) is committed by a Scottish firm, and
 - (b) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner of the firm,the partner (as well as the firm) is guilty of the offence and liable to be proceeded with and dealt with accordingly.
- (4) In this section—
 - “offence” means an offence under this Act;
 - “officer”, in relation to a body corporate, means—
 - (a) any director, secretary or other similar officer of the body corporate, or
 - (b) any person who was purporting to act in any such capacity.

Commencement Information

II S. 103 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(i\)](#)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 6. (See end of Document for details)

104 Subordinate legislation

- (1) Orders and regulations made by the Secretary of State or the Scottish Ministers under this Act are to be made by statutory instrument.
- (2) An instrument to which this subsection applies may—
 - (a) provide for a person to exercise a discretion in dealing with any matter;
 - (b) include incidental, supplementary and consequential provision;
 - (c) make transitory or transitional provisions or savings;
 - (d) make provision generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as conditions specified in the instrument are satisfied);
 - (e) make different provision for different cases or circumstances or for different purposes.
- (3) Subsection (2) applies to—
 - (a) an Order in Council under this Act,
 - (b) an order or regulations made by the Secretary of State or the Scottish Ministers under this Act (other than an order which contains provision made under section 110 (commencement) only).
- (4) The provision which may be made by virtue of subsection (2)(b) or (c) includes provision modifying any provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made).

Commencement Information

I2 S. 104 partly in force; s. 104 in force for certain purposes at Royal Assent, see s. 110(1)(b)

I3 S. 104 in force at 26.1.2009 in so far as not already in force by [S.I. 2009/45](#), [art. 2\(e\)\(ii\)](#)

105 Parliamentary control of subordinate legislation

- (1) A statutory instrument containing an Order in Council, order or regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.
- (2) Subsection (1) does not apply to—
 - (a) an order which contains, or regulations which contain, (whether alone or together with other provision) provision made under—
 - (i) section 13 (importation and storage of combustible gas: inspectors),
 - (ii) section 27 (carbon dioxide storage: inspectors),
 - (iii) section 41(6) (feed-in tariffs for small-scale electricity generation),
 - (iv) section 45(6)(a) (power to specify matters as designated technical matters),
 - (v) section 62(1) (power to apply Chapter 1 of Part 3 to other nuclear installations), or
 - [^{F1}(va) section 82N (power to make regulations in relation to persons appointed as inspectors etc),
 - (vb) section 82P (power to extend application of Part 4A),]
 - ^{F2}(vi)
 - ^{F3}(aa)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 6. (See end of Document for details)

- [^{F4}(ab) regulations which contain (whether alone or together with other provision) affirmative resolution provision made under section 100 (renewable heat incentives);]
- (b) an order, regulations or Order in Council which contains (whether alone or together with other provision) provision which, by virtue of section 43(3)(b), 86(3), 90(3), 104(4), 107(2)(a) or 109(3)(a) modifies an Act or an Act of the Scottish Parliament;
- (c) an order which contains provision made under section 110 (commencement orders) only.
- (3) No order, regulations or recommendation to make an Order in Council, within subsection (2)(a) [^{F5}, (ab)] or (b), may be made unless a draft of the order, regulations or Order in Council has been laid before, and approved by a resolution of, each House of Parliament.
- [^{F6}(3A) Provision made under section 100 is affirmative resolution provision if—
- (a) the provision is made under any of the powers which always attract the affirmative resolution procedure, or
- (b) the provision—
- (i) is not made under any of those powers, and
- (ii) meets condition A, B, C or D.
- (3B) The powers which always attract the affirmative resolution procedure are the powers conferred by—
- (a) section 100(2)(c), (e), (f), (g), (h) and (k),
- (b) section 100(5), and
- (c) section 100(6).
- (3C) Provision meets condition A if—
- (a) it is made under the power conferred by section 100(2)(bb), and
- (b) it requires a designated fossil fuel supplier to make a payment under an RHI scheme.
- (3D) Provision meets condition B if—
- (a) it confers an administration function on a person who is not the Secretary of State or the Authority, and
- (b) the time when the provision comes into force will be the first time that an administration function under the RHI scheme concerned is exercisable by a person who is not the Secretary of State or the Authority.
- (3E) Provision meets condition C if—
- (a) it is made under a power conferred by paragraph (ba) or (bb)(ii) of section 100(2),
- (b) it is made in relation to an RHI scheme that was in existence immediately before the coming into force of this subsection, and
- (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3F) Provision meets condition D if—
- (a) it is made under a power conferred by paragraph (a), (b), (ba), (bb), (d) or (j) of section 100(2),

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- (b) it is made in relation to an RHI scheme that was not in existence immediately before the coming into force of this subsection, and
 - (c) it is the first provision to be made under that power in relation to that RHI scheme.
- (3G) In deciding whether provision meets condition B, the following matters must be ignored—
- (a) for the purposes of subsection (3D)(a): any provision which confers a payment function on designated fossil fuel suppliers;
 - (b) for the purposes of subsection (3D)(b): any payment function under the RHI scheme concerned which (before the time when the provision comes into force) is, or has been, exercisable by designated fossil fuel suppliers.
- (3H) The fact that provision is to some extent made under a power conferred by section 100(1), (1A) or (1B) does not prevent that provision from being taken (for the purposes of subsections (3A) to (3F)) as being made under any other power conferred by section 100.
- (3I) In subsections (3B) to (3H) and this subsection—
- “ administration function ” means a function relating to the administration of an RHI scheme;
 - “ designated fossil fuel suppliers ” has the same meaning as in section 100;
 - “ payment function ” means a function of making a payment under an RHI scheme (whether the function authorises or requires the making of the payment);
 - “ RHI scheme ” means a scheme under section 100 to facilitate and encourage renewable generation of heat.]
- (4) In the case of a statutory instrument containing an order or regulations made by the Scottish Ministers, this section has effect as if—
- (a) in subsection (1) the reference to either House of Parliament were a reference to the Scottish Parliament,
 - (b) in subsection (2)(b) for “107(2)(a)” there were substituted “ 107(3)(a) ”, and
 - (c) in subsection (3) the reference to each House of Parliament were a reference to the Scottish Parliament.

Textual Amendments

- F1** S. 105(2)(a)(va)(vb) inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 314(2), 324(3)**; [S.I. 2011/556](#), **art. 3(2)(c)**
- F2** S. 105(2)(a)(vi) omitted (12.2.2015) by virtue of [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(6)(a), 57(7)(d)**
- F3** [S. 105\(2\)\(aa\)](#) omitted (26.12.2023) by virtue of [Energy Act 2023 \(c. 52\)](#), **ss. 98(2), 334(3)(b)**
- F4** S. 105(2)(ab) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(6)(b), 57(7)(d)**
- F5** Words in s. 105(3) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(7), 57(7)(d)**
- F6** S. 105(3A)-(3I) inserted (E.W.S.) (12.2.2015) by [Infrastructure Act 2015 \(c. 7\)](#), **ss. 51(8), 57(7)(d)**

Commencement Information

- I4** S. 105 partly in force; s. 105 in force for certain purposes at Royal Assent, see [s. 110\(1\)\(b\)](#)
- I5** S. 105 in force at 26.1.2009 in so far as not already in force by [S.I. 2009/45](#), **art. 2(e)(iii)**

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2008, Part 6. (See end of Document for details)

106 Interpretation

In this Act—

- “functions” includes powers and duties;
- “modify” includes amend, add to, revoke or repeal (and references to “modifications” are to be construed accordingly);
- “territorial sea” means the territorial sea adjacent to the United Kingdom.

107 Minor and consequential amendments

- (1) Schedule 5 contains minor and consequential amendments.
- (2) The Secretary of State may by order make such modifications of—
 - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session,as the Secretary of State considers appropriate in consequence of this Act.
- (3) The Scottish Ministers may by order make such modifications of—
 - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session,as the Scottish Ministers consider appropriate in consequence of Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.

Commencement Information

- I6** S. 107 partly in force; s. 107(1) in force for certain purposes at Royal Assent, see s. 110(1)(e)
- I7** S. 107(1) in force at 26.1.2009 for specified purposes by [S.I. 2009/45](#), [art. 2\(e\)\(iv\)](#)
- I8** S. 107(1) in force at 1.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 3\(c\)\(i\)](#)
- I9** S. 107(1) in force at 6.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 4\(d\)\(i\)](#)
- I10** S. 107(2)(3) in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(v\)](#)

108 Repeals

Schedule 6 contains repeals (including repeals of spent provisions).

Commencement Information

- I11** S. 108 in force at 26.1.2009 for specified purposes by [S.I. 2009/45](#), [art. 2\(e\)\(vi\)](#)
- I12** S. 108 in force at 1.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 3\(c\)\(ii\)](#)
- I13** S. 108 in force at 6.4.2009 for specified purposes by [S.I. 2009/45](#), [art. 4\(d\)\(ii\)](#)
- I14** [S. 108](#) in force at 10.6.2014 for specified purposes by [S.I. 2014/1461](#), [art. 2\(b\)](#)

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109 Transitional provision etc

- (1) The Secretary of State may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, this Act.
- (2) The Scottish Ministers may by order make any transitional, transitory or saving provision which appears appropriate in consequence of, or otherwise in connection with, Chapter 3 of Part 1 of this Act as that Chapter applies in relation to the territorial sea adjacent to Scotland (within the meaning of that Chapter) or in relation to functions of the Scottish Ministers.
- (3) The provision which may be made by virtue of subsection (1) or (2) includes provision modifying any provision made by—
 - (a) an Act, or Act of the Scottish Parliament, passed before the end of the session in which this Act was passed, or
 - (b) an instrument made before the end of that session.
- (4) Provision made under this section is additional, and without prejudice, to that made by or under any other provision of this Act.

Commencement Information

I15 S. 109 in force at 26.1.2009 by [S.I. 2009/45](#), [art. 2\(e\)\(vii\)](#)

110 Commencement

- (1) The following provisions come into force on the day on which this Act is passed—
 - (a) section 37, so far as is necessary for enabling the exercise on or after that day of any power to make an order that is conferred by virtue of that section, and section 38(1);
 - (b) sections 88 to 91 (and sections 104 and 105 in so far as those sections apply in relation to orders made under section 90(3)) and Schedule 4;
 - (c) section 102;
 - (d) this section and sections 106, 111, 112 and 113;
 - (e) paragraph 5 of Schedule 5 (and section 107(1) so far as it relates to that paragraph).
- (2) Subject to that, the provisions of this Act come into force on such day as may be appointed by order of the Secretary of State.
- (3) An order under this section may—
 - (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provisions or savings;
 - (c) make different provision for different cases or circumstances or for different purposes.

111 Financial provisions

The following are to be paid out of money provided by Parliament—

- (a) any expenditure incurred by the Secretary of State by virtue of this Act;

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- (b) any expenditure incurred by the Gas and Electricity Markets Authority by virtue of this Act;
- (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.

112 Extent

- (1) Subject to subsections (2) to (5), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) The following provisions extend to England and Wales and Scotland only—
 - (a) section 38 (renewables obligation: supplemental provision);
 - (b) sections 41 to 43 (feed-in tariffs for small-scale electricity generation);
 - ^{F7}(c)
 - (d) sections 84 to 86 (power to amend licence conditions: transmission systems);
 - (e) sections 88 to 90 (smart meters);
 - (f) sections 92 to 97 (gas and electricity meters);
 - (g) section 99 (electricity safety);
 - (h) section 100 (renewable heat incentives);
 - (i) section 102 (general duties of Authority and Secretary of State).
- (3) Chapter 1 of Part 3 ^{F8}...(nuclear decommissioning) extends to England and Wales and Northern Ireland only.
- (4) Section 40(2) to (4) (the Northern Ireland renewables obligation) extend to Northern Ireland only.
- (5) An amendment or repeal contained in this Act has the same extent as the enactment or relevant part of the enactment to which the amendment or repeal relates.

Textual Amendments

- F7** S. 112(2)(c) omitted (21.3.2012) by virtue of [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 para. 18](#); [S.I. 2012/873](#), art. 2(b)(i) (with art. 4)
- F8** Words in s. 112(3) repealed (1.4.2014) by [Energy Act 2013 \(c. 32\)](#), s. 156(1), [Sch. 12 para. 30](#); [S.I. 2014/251](#), art. 4

113 Short title

This Act may be cited as the Energy Act 2008.

Changes to legislation:

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