



Energy Act 2008

2008 CHAPTER 32

PART 6

GENERAL

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)
 - [^{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;

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- (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),
 - (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—

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- (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

- I1** S. 105 partly in force; s. 105 in force for certain purposes at Royal Assent, see s. 110(1)(b)
- I2** 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, Section 105.