



# Energy Act 2011

## 2011 CHAPTER 16

### PART 2

#### SECURITY OF ENERGY SUPPLIES

### CHAPTER 1

#### ELECTRICITY SUPPLY

#### **79 Annual report by Gas and Electricity Markets Authority on security of electricity supply**

Before section 47 of the Electricity Act 1989 (and after the cross-heading immediately preceding that section) insert—

#### **“47ZA Annual report by Authority on security of electricity supply**

- (1) The Authority must, before 1 September 2012, and before that date in every subsequent calendar year—
  - (a) prepare a report on the future demand for, and supply of, electricity in Great Britain, in accordance with subsection (2), and
  - (b) send the report to the Secretary of State.
- (2) A report under subsection (1) must include, as regards each forecast period—
  - (a) a forecast of the peak demand for the supply of electricity to consumers in Great Britain;
  - (b) an assessment of different possible capacity margins for that supply, and of the degree of protection that each would provide against the risk of shortfalls in supply due to unexpected demand or unexpected loss of capacity.
- (3) The forecast periods in relation to a report under subsection (1) are—

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- (a) each of the four calendar years immediately following the year of the report; or
  - (b) any other periods that the Secretary of State specifies by order.
- (4) A forecast by virtue of subsection (2)(a) must be expressed as a single figure in megawatts rounded to the nearest 100 megawatts, unless the Secretary of State directs otherwise.
- (5) An assessment by virtue of subsection (2)(b) must take into account, in particular—
  - (a) the generation of electricity;
  - (b) the operation of electricity interconnectors;
  - (c) the storage of electricity;
  - (d) the extent to which the available capacity of a generating station is likely to be lower than its maximum possible capacity due to routine maintenance, weather conditions or any other expected limitation on its operation;
  - (e) demand side response.
- (6) A forecast or assessment by virtue of subsection (2) may to any extent be made by, or based on information provided by—
  - (a) the holder of a transmission licence;
  - (b) any other person.
- (7) The Secretary of State may give the Authority directions regarding—
  - (a) the form of a report under subsection (1);
  - (b) the manner in which such a report must be prepared or sent;
  - (c) the manner in which a forecast or assessment by virtue of subsection (2) must be made or expressed (including, in particular, the method of calculation of any of the things mentioned in subsection (2)(a) or (b)).
- (8) In this section—
  - “capacity margin” means the amount by which the peak demand for the supply of electricity is exceeded by the capacity likely to be available to meet that demand;
  - “consumers” includes both existing and future consumers;
  - “demand side response” means the cessation of, or a reduction in, the provision of electricity to a person at times of high demand, by agreement with the person.”

## **80      Annual report by Secretary of State on security of energy supplies**

- (1) Section 172 of the Energy Act 2004 (annual report by Secretary of State on security of energy supplies) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) In 2012 and in every subsequent calendar year the report must also include, in particular, as regards each of the assessment periods, an assessment by the Secretary of State of what electricity supply capacity is required.
  - (2B) For the purposes of subsection (2A) the electricity supply capacity required is the capacity required for the purpose of meeting the demands of consumers

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for the supply of electricity in Great Britain, including spare capacity to allow for unexpected demands or unexpected loss of capacity.

- (2C) The assessment periods, in relation to a report under subsection (1), are—
- (a) each of the four calendar years immediately following the year of the report; or
  - (b) any other periods that the Secretary of State specifies by order.
- (2D) An assessment by virtue of subsection (2A) must take into account, in particular—
- (a) the generation of electricity;
  - (b) the operation of electricity interconnectors;
  - (c) the storage of electricity;
  - (d) the extent to which the available capacity of a generating station is likely to be lower than its maximum possible capacity due to routine maintenance, weather conditions or any other expected limitation on its operation;
  - (e) demand side response.”

- (3) In subsection (3), after “report” insert “, other than the assessment by virtue of subsection (2A),”.

- (4) After subsection (3) insert—

“(3A) An order under this section is subject to the negative resolution procedure.”

- (5) In subsection (4)—

- (a) after the definition of “consumers” insert—

“ “demand side response” means the cessation of, or a reduction in, the provision of electricity to a person at times of high demand, by agreement with the person;”;
- (b) after “distribution system,” insert “ “ electricity interconnector ”, “generating station”, “generation”, “supply,” ”.

## CHAPTER 2

### GAS SUPPLY

#### **81 Power of the Gas and Electricity Markets Authority to direct a modification of the Uniform Network Code**

- (1) After section 36B of the Gas Act 1986 insert—

##### **“36C Power to direct a modification of the UNC**

- (1) The Authority may direct the operator of the gas National Transmission System to make a modification to which this section applies and which is specified in the direction to the Uniform Network Code.
- (2) This section applies to a modification—

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- (a) which relates to the arrangements contained in the Code in respect of a Gas Supply Emergency, and
  - (b) which the Authority considers is a market-based modification.
- (3) The Authority may give a direction under this section only if it considers that the modification will do either or both of the following—
  - (a) decrease the likelihood of a Gas Supply Emergency occurring;
  - (b) decrease the duration or severity of a Gas Supply Emergency which occurs.
- (4) In the exercise of the power under this section the Authority must have regard to the purposes of Standard Special Condition A11 of licences granted under section 7 of this Act.
- (5) For the purposes of subsection (2), a modification is “market-based” if it relates to the creation of financial incentives for gas shippers or gas transporters.
- (6) Before giving a direction under this section the Authority must consult such persons as it considers appropriate.
- (7) In this section—
  - “Gas Supply Emergency” and “National Transmission System” have the meaning given by the Uniform Network Code;
  - “the Uniform Network Code” means the document of that title required to be prepared pursuant to Standard Special Condition A11 of licences granted under section 7 of this Act.”
- (2) The requirement of subsection (6) of section 36C of the Gas Act 1986 may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (3) In section 38A of the Gas Act 1986 (reasons for decisions), in subsection (1), after paragraph (e) insert—
  - “(ea) the giving of a direction under section 36C;”.
- (4) In section 173 of the Energy Act 2004 (appeals to the Competition Commission), after subsection (2) insert—
  - “(2A) This section also applies to a decision by GEMA to give a direction under section 36C of the Gas Act 1986 (power to direct a modification of the Uniform Network Code).
  - (2B) But subsection (2A) does not have effect in relation to such a decision if it falls within a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.”
- (5) In section 175 of the Energy Act 2004 (determination of appeals), in subsection (4)(b) for “the purposes for which the relevant condition has effect” substitute “—
  - (i) the purposes for which the relevant condition has effect (in the case of an appeal by virtue of section 173(2)), or
  - (ii) the purposes of the power to give a direction under section 36C of the Gas Act 1986 or the purposes of Standard Special Condition A11 of licences granted under section 7 of that Act (in the case of an appeal by virtue of section 173(2A))”.

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- (6) In Schedule 22 to the Energy Act 2004 (procedure for appeals under section 173 of that Act), in paragraph 3(6) (suspension of a decision) after “direction” insert “ (including a direction being appealed against by virtue of section 173(2A) of this Act) ”.

## CHAPTER 3

### UPSTREAM PETROLEUM INFRASTRUCTURE

#### 82 Acquisition of rights to use upstream petroleum infrastructure

- (1) This section applies where—

- (a) a person makes an application to the owner of a relevant upstream petroleum pipeline for a right to have things of a kind specified in the application conveyed by the pipeline during such period as is so specified and in such quantities as are so specified;
- (b) a person makes an application to the owner of a relevant oil processing facility for a right to have petroleum of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified; or
- (c) a person makes an application to the owner of a relevant gas processing facility for a right to have piped gas of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified.

And references in this section to “the access application” are to the application made to the owner of the pipeline or facility.

- (2) This section does not apply by virtue of subsection (1)(c) where a person makes an application to the owner of a gas processing facility for a right to have gas processed by the facility for a downstream purpose (as to which, see section 12 of the Gas Act 1995).
- (3) For the purposes of subsection (1) an upstream petroleum pipeline, an oil processing facility or a gas processing facility is “relevant” if and in so far as it is situated—
- (a) in Great Britain;
  - (b) in the territorial sea adjacent to Great Britain; or
  - (c) in the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;
- but an upstream petroleum pipeline which is so situated is not “relevant” if it is a pipeline to which section 17GA of the Petroleum Act 1998 applies (petroleum pipelines subject to Norwegian access system).
- (4) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the [F1OGA] for a notice under subsection (11) which would secure to the applicant the right sought in the access application.
- (5) The [F1OGA] may not consider an application under subsection (4) unless satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.
- (6) When considering an application under subsection (4) the [F1OGA] must—
- (a) decide whether the application is to be—
    - (i) rejected,

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- (ii) adjourned to enable further negotiation between the applicant and the owner, or
  - (iii) considered further, and
- (b) in the case of a decision to consider the application further, give an opportunity to be heard to—
  - (i) the applicant and the owner;
  - (ii) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (iii) the Health and Safety Executive;
  - (iv) such other persons as the [F1OGA] considers appropriate.
- (7) When giving further consideration to an application under subsection (4) the [F1OGA] must (so far as relevant) take into account—
  - (a) capacity which is or can reasonably be made available in the pipeline or at the facility;
  - (b) any incompatibilities of technical specification which cannot reasonably be overcome;
  - (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
  - (d) the reasonable needs of the owner and any associate of the owner for the conveying and processing of petroleum;
  - (e) the interests of all users and operators of the pipeline or facility;
  - (f) the need to maintain security and regularity of supplies of petroleum; and
  - (g) the number of parties involved in the dispute.
- (8) The [F1OGA] may give a notice under subsection (11) only if the condition in subsection (9) or (10) is met.
- (9) The condition in this subsection is that the [F1OGA] is satisfied that the notice will not prejudice—
  - (a) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which the owner or an associate of the owner requires or may reasonably be expected to require;
  - (b) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which another person with a right to have things so conveyed or processed requires to be conveyed or processed in exercise of that right.
- (10) The condition in this subsection is that the notice contains provision for the purpose of ensuring that if the notice does prejudice any of the matters mentioned in subsection (9) any person who suffers loss as a result may recover from the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.
- (11) A notice under this subsection may contain such provisions as the [F1OGA] considers appropriate for any of the following purposes—
  - (a) to secure to the applicant the right sought in the access application;
  - (b) to secure that the exercise of the right is not prevented or impeded;
  - (c) to secure to the applicant such ancillary or incidental rights as the [F1OGA] considers necessary or expedient, which may include the right to have a

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- pipeline of the applicant's connected to the pipeline or facility by the applicant or the owner;
- (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (12) A notice under subsection (11) may also contain such provisions as the [F1OGA] considers appropriate for the purpose of ensuring that no person suffers a loss by reason of the mixing together of—
- (a) substances conveyed by the pipeline or processed by the facility on behalf of the applicant in exercise of a right secured by the notice; and
- (b) substances conveyed by the pipeline or processed by the facility by or on behalf of any other person.
- (13) A notice under subsection (11) may also—
- (a) contain provision authorising the owner to recover from the applicant payments by way of consideration for any right secured by the notice of amounts specified in the notice or determined in accordance with the notice;
- <sup>F2</sup>(b) .....
- (14) A notice under subsection (11) is to be given to the owner and the applicant.
- (15) If a notice under subsection (11) contains provision of a sort mentioned in subsection (10) or (12) the [F1OGA] must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or processed by the facility.
- (16) Before giving a copy of a notice under subsection (15) the [F1OGA] must—
- (a) remove from the copy any provision included in the notice by virtue of subsection (11)(d) or (13)(a); and
- (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the [F1OGA] considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (17) A notice under subsection (11) does not come into force unless and until the applicant indicates acceptance of the terms of the notice in such manner and within such period as is specified in the notice.
- (18) For the purposes of subsection (3)(b) and (c) a pipeline is to be treated as being situated in the sea in any area if it is situated in, under or over the sea in that area.
- (19) In this section and section 83 “owner”, in relation to an upstream petroleum pipeline, an oil processing facility or a gas processing facility, means any of the following—
- (a) a person in whom the pipeline or facility is vested;
- (b) a lessee and any person occupying or controlling the pipeline or facility; and
- (c) a person who has the right to have things conveyed by the pipeline or processed by the facility, where such right has been acquired by that person on terms that—
- (i) the person is entitled to exercise the right for a period of one year or more; and
- (ii) the right is capable of being assigned or otherwise disposed of to another person.

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#### Textual Amendments

- F1** Words in s. 82 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 64](#); [S.I. 2016/920](#), reg. 2(a)
- F2** S. 82(13)(b) omitted (1.10.2016) by virtue of [Energy Act 2016 \(c. 20\)](#), [ss. 71\(2\)](#), 84(3); [S.I. 2016/920](#), reg. 2(c)

#### Modifications etc. (not altering text)

- C1** S. 82 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), art. 2(b)(i) (with art. 4)

#### Commencement Information

- I1** S. 82 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with art. 4)

### 83 Power of [<sup>F3</sup>OGA] to give a notice under section 82(11) on own initiative

- (1) This section applies where—
  - (a) a person has made an application of a kind mentioned in subsection (1) of section 82 to the owner of a pipeline or facility, and
  - (b) the applicant and the owner have not reached agreement on the application.
- (2) The [<sup>F4</sup>OGA may on its] own initiative give a notice under subsection (11) of section 82 which would secure to the applicant the right sought in the application; but this is subject to subsection (8) of that section and subsections (3) and (4).
- (3) The [<sup>F5</sup>OGA] may not exercise the power conferred by subsection (2) unless the [<sup>F5</sup>OGA] is satisfied that—
  - (a) the applicant and the owner have had a reasonable time in which to reach agreement on the application; and
  - (b) there is no realistic prospect of them doing so.
- (4) In considering whether to exercise the power conferred by subsection (2) the [<sup>F6</sup>OGA] must—
  - (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (5) an opportunity to be heard.
- (5) Those persons are—
  - (a) the applicant and the owner;
  - (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the [<sup>F7</sup>OGA] considers appropriate.

#### Textual Amendments

- F3** Word in s. 83 heading substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 65\(6\)](#); [S.I. 2016/920](#), reg. 2(a)
- F4** Words in s. 83(2) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 65\(2\)](#); [S.I. 2016/920](#), reg. 2(a)



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- F5** Word in s. 83(3) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 65\(3\)](#); [S.I. 2016/920](#), reg. 2(a)
- F6** Word in s. 83(4) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 65\(4\)](#); [S.I. 2016/920](#), reg. 2(a)
- F7** Word in s. 83(5)(d) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 65\(5\)](#); [S.I. 2016/920](#), reg. 2(a)

**Modifications etc. (not altering text)**

- C2** S. 83 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), art. 2(b)(i) (with art. 4)

**Commencement Information**

- I2** S. 83 in force at 21.3.2012 by [S.I. 2012/873](#), art. 2(b)(i) (with art. 4)

## 84 Compulsory modification of upstream petroleum infrastructure

(1) This section applies where—

- (a) a person has made an application of a kind mentioned in subsection (1) of section 82, and
- (b) the [F8OGA] is considering whether to give a notice under subsection (11) of that section which would secure to the applicant the right sought in the application.

(2) If it appears to the [F8OGA] —

- (a) that the pipeline or facility that is the subject of the application can and should be modified so as to increase its capacity; or
- (b) that the pipeline or facility that is the subject of the application can and should be modified by installing in it a junction or other apparatus through which a pipeline of the applicant's may be connected,

then the [F8OGA] may give the applicant and the owner of the pipeline or facility a notice in accordance with subsections (3) and (4).

(3) A notice under subsection (2) must—

- (a) specify the modifications which the [F8OGA] considers should be made to the pipeline or facility;
- (b) specify the sums or the method for determining the sums which the [F8OGA] considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications;
- (c) require the applicant to make, within the period specified for the purpose in the notice, arrangements which the [F8OGA] considers appropriate to secure that those sums will be paid to the owner if the owner carries out the modifications or satisfies the [F8OGA] that they will be carried out;
- (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified for the purpose in the notice; and
- (e) authorise the owner, if the [F8OGA] is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.

(4) A notice under subsection (2) may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters mentioned in subsection (9) of section 82 any person who suffers loss as a result may recover from

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- the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.
- (5) If a notice under subsection (2) contains provision by virtue of subsection (4) the [F8OGA] must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or processed by the facility.
- (6) Before giving a copy of a notice under subsection (5) the [F8OGA] must—
- (a) remove from the copy any provision included in the notice by virtue of subsection (3)(b); and
  - (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the [F8OGA] considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (7) In considering whether to give a notice under subsection (2) the [F8OGA] must—
- (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (8) an opportunity to be heard.
- (8) Those persons are—
- (a) the applicant and the owner;
  - (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the [F8OGA] considers appropriate.
- (9) If the [F8OGA] gives a notice under subsection (2), section 82 has effect in relation to the pipeline or facility concerned as if references to the pipeline or facility were references to the pipeline or facility as it would be with the modifications specified in the notice.
- (10) In this section “owner”, in relation to a pipeline or facility, means any of the following—
- (a) a person in whom the pipeline or facility is vested; and
  - (b) a lessee and any person occupying or controlling the pipeline or facility.

#### Textual Amendments

- F8** Words in s. 84 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 66](#); [S.I. 2016/920](#), reg. 2(a)

#### Modifications etc. (not altering text)

- C3** S. 84 excluded by 1962 c. 58, s. 9(9)(b) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), art. 2(b)(i) (with art. 4)

#### Commencement Information

- I3** S. 84 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with art. 4)

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## 85 Variation of notices under sections 82 and 84

- (1) The persons to whom a notice is given under subsection (11) of section 82 or subsection (2) of section 84 may agree to vary or set aside the notice.
- (2) The [F9 OGA] may vary a notice under subsection (11) of section 82 or subsection (2) of section 84 on the application of one of the persons to whom the notice was given.
- (3) But the [F9 OGA] may do so only if satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons to whom it was given.
- (4) In considering whether to vary a notice the [F9 OGA] must give an opportunity to be heard to—
  - (a) the persons to whom the notice was given;
  - (b) any person with a right to have anything conveyed by the pipeline concerned or processed by the facility concerned;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the [F9 OGA] considers appropriate.
- (5) For the purposes of this section and section 86, a person is to be treated as having been given a notice if the person has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.

### Textual Amendments

- F9** Words in s. 85 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 67](#); [S.I. 2016/920](#), reg. 2(a)

### Commencement Information

- I4** S. 85 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 86 Publication of notices and variations

- (1) Where the [F10 OGA] gives a notice under subsection (11) of section 82 or subsection (2) of section 84, the [F10 OGA] may—
  - (a) publish the notice or any part of it;
  - (b) publish a summary of the effect of the notice or any part of it.
- (2) Where the [F10 OGA] varies a notice in exercise of the power conferred by subsection (2) of section 85, the [F10 OGA] may—
  - (a) publish the variation;
  - (b) publish the notice, or any part of it, as varied;
  - (c) publish a summary of the effect of the variation.
- (3) Before publishing anything under this section the [F10 OGA] must give an opportunity to be heard to the persons to whom the notice was given and to such other persons as the [F10 OGA] considers appropriate.

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### Textual Amendments

**F10** Words in s. 86 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 68](#); [S.I. 2016/920](#), reg. 2(a)

### Commencement Information

**I5** S. 86 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 87 Powers of [F11 OGA] to require information

- (1) Where the [F11 OGA] has reason to believe that a person has made or received an application of a kind mentioned in subsection (1) of section 82, the [F11 OGA] may by notice require the person to confirm whether or not that is the case.
  - (2) The [F11 OGA] may by notice require a person who has made or received an application of a kind mentioned in subsection (1) of section 82 to provide the [F11 OGA] with specified information for the purpose of enabling the [F11 OGA] to decide—
    - (a) whether to exercise any function conferred on the [F11 OGA] by section 82, 83, or 84; and
    - (b) if so, how to exercise the function.
  - (3) Where a person has applied to the [F11 OGA] under section 85 for a notice to be varied, the [F11 OGA] may by notice require any person within subsection (4) to provide the [F11 OGA] with specified information for the purpose of enabling the [F11 OGA] to decide—
    - (a) whether to vary the notice; and
    - (b) if so, how to vary the notice.
  - (4) Those persons are—
    - (a) the person who applied for the notice to be varied;
    - (b) the other person to whom the notice was given;
    - (c) any person who has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.
  - (5) The information that may be required under subsection (2) and (3) includes financial information.
- [F12(5A) A notice under subsection (1), (2) or (3) that imposes a requirement on a person must specify when the requirement is to be complied with.]
- (6) The [F11 OGA] may not disclose any information obtained under this section unless—
    - (a) the person by or on behalf of whom the information was provided consents to the disclosure, <sup>F13</sup>...
    - (b) the disclosure is required by virtue of an obligation imposed on the [F11 OGA] by or under an enactment <sup>F14</sup>or
    - (c) the disclosure is made under section 89A or 89B.]
  - (7) In this section “specified” means specified in a notice under subsection (2) or (3).

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

#### Textual Amendments

- F11** Words in s. 87 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), **Sch. 1 para. 69**; S.I. 2016/920, reg. 2(a)
- F12** S. 87(5A) inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 70(2)**, 84(3); S.I. 2016/920, reg. 2(c)
- F13** Word in s. 87(6)(a) omitted (1.10.2016) by virtue of [Energy Act 2016 \(c. 20\)](#), **ss. 71(3)(a)**, 84(3); S.I. 2016/920, reg. 2(c)
- F14** S. 87(6)(c) and preceding word inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 71(3)(b)**, 84(3); S.I. 2016/920, reg. 2(c)

#### Commencement Information

- I6** S. 87 in force at 21.3.2012 by [S.I. 2012/873](#), **art. 2(b)(i)** (with [art. 4](#))

### [<sup>F15</sup>87A Appeals against requirements to provide information

- (1) Any person on whom a requirement is imposed by a notice under section 87(1), (2) or (3) may appeal against the notice to the Tribunal on the grounds that—
  - (a) the information required by the notice is not relevant to the exercise by the OGA of its functions under this Chapter, or
  - (b) the length of time given to comply with the notice is unreasonable.
- (2) On an appeal under this section the Tribunal may—
  - (a) confirm, vary or cancel the notice, or
  - (b) remit the matter under appeal to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate.
- (3) In this section “the Tribunal” means the First-tier Tribunal.

#### Textual Amendments

- F15** Ss. 87A 87B inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 70(3)**, 84(3); S.I. 2016/920, reg. 2(c)

### 87B Sanctions for failure to provide information

- (1) A requirement imposed by a notice under section 87(1), (2) or (3) is to be treated for the purposes of Chapter 5 of Part 2 of the Energy Act 2016 (power of the OGA to impose sanctions) as a petroleum-related requirement.
- (2) But the OGA may not give a revocation notice or an operator removal notice under that Chapter by virtue of this section.]

#### Textual Amendments

- F15** Ss. 87A 87B inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), **ss. 70(3)**, 84(3); S.I. 2016/920, reg. 2(c)

### 88 Enforcement

- (1) A person is guilty of an offence if, in circumstances falling within subsection (2), the person provides false information to the [<sup>F16</sup>OGA] for the purpose of—

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (a) inducing the [F16OGA] to exercise or not to exercise any of the functions conferred on the [F16OGA] by sections 82 to 85; or
  - (b) inducing the [F16OGA] to exercise any of those functions in a particular way.
- (2) Those circumstances are that, at the time the information is provided, the person—
  - (a) knows or believes the information to be false; or
  - (b) is reckless as to whether or not it is false.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level five on the standard scale.
- (4) Proceedings for an offence under subsection (1) may not be instituted in England and Wales except—
  - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (5) Where an offence under subsection (1) is committed by a body corporate and it 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.
- (6) Where an offence under subsection (1) is committed by a Scottish partnership and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (7) The duty of a person to comply with a notice under subsection (11) of section 82 or subsection (2) of section 84 is a duty owed to any person who may be affected by a failure to comply with it.
- (8) Where a duty is owed by virtue of subsection (7) to any person, the duty may be enforced as if it were contained in a contract between that person and the person who owes the duty.
- (9) The duty of a person to comply with a notice under section 87 is enforceable by civil proceedings by the [F17OGA] —
  - (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
  - (c) for any other appropriate relief or remedy.
- (10) Civil proceedings under subsection (9) are to be brought—
  - (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (11) In this section—
  - “officer”, in relation to a body corporate, means—
    - (a) any director, manager, secretary or other similar officer of the body corporate, or
    - (b) any person purporting to act in any such capacity;

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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“partner”, in relation to a Scottish partnership, includes any person who was purporting to act as a partner in the partnership.

- (12) In subsection (11) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### Textual Amendments

- F16** Words in s. 88(1) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 70\(2\)](#); [S.I. 2016/920](#), reg. 2(a)
- F17** Word in s. 88(9) substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 70\(3\)](#); [S.I. 2016/920](#), reg. 2(a)

#### Commencement Information

- I7** S. 88 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with art. 4)

## 89 Minor, consequential and supplemental provision

- (1) Schedule 2 contains minor and consequential amendments relating to this Chapter.
- (2) Before exercising any power conferred by sections 82 to 85 in respect of an upstream petroleum pipeline that is situated partly in a foreign sector of the continental shelf, the [F18OGA] must consult the relevant authorities in the other country.
- (3) The use of a pipeline by any person in accordance with a right secured by a notice under subsection (11) of section 82 is not a contravention of section 14(1) of the Petroleum Act 1998.
- (4) Subsection (5) applies where—
- (a) an authorisation has been issued under section 14 of the Petroleum Act 1998 (construction and use of controlled pipelines) for works for the construction of a pipeline;
  - (b) the authorisation contains a term of a kind mentioned in section 15(5) of that Act; and
  - (c) the proposed pipeline is to be a relevant upstream petroleum pipeline.
- (5) Before serving a notice under section 15(6) of the Petroleum Act 1998 on a person other than the holder of the authorisation, the [F18OGA] must give that person an opportunity to make with respect to the proposed pipeline—
- (a) an application of a kind mentioned in subsection (1)(a) of section 82 of this Act, and
  - (b) if applicable, an application under subsection (4) of that section;
- and for the purposes of any such application the provisions of this Chapter have effect with the modifications in subsection (6).
- (6) The modification are that—
- (a) references to a pipeline are to the proposed pipeline as it would be once constructed in accordance with the terms of the authorisation;
  - (b) references to the owner of a pipeline are to the proposed owner of the proposed pipeline;
  - (c) section 84 is omitted.

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

- (7) In subsection (4)(c) “relevant upstream petroleum pipeline” means an upstream petroleum pipeline that is “relevant” for the purposes of subsection (1) of section 82.

#### Textual Amendments

**F18** Words in s. 89 substituted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 71](#); [S.I. 2016/920](#), reg. 2(a)

#### Commencement Information

**I8** S. 89 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

### [<sup>F19</sup>89A Assignments and assignations of applications

- (1) This section applies where—
  - (a) there is an assignment or assignation of an application made under section 82 from one person (“A”) to another (“B”), and
  - (b) the following are notified of the assignment or assignation—
    - (i) the owner of the pipeline or facility that is the subject of the application, and
    - (ii) the OGA.
- (2) A notice under subsection (1)(b) must—
  - (a) be in writing, and
  - (b) specify the date of the assignment or assignation.
- (3) For the purposes of this Chapter, anything done (or treated as done) by or in relation to A in connection with the application is treated after the assignment or assignation as having been done by or in relation to B. This subsection is subject to subsections (4) and (5) and does not apply for the purposes of subsections (6) and (7).
- (4) Any provision of this Chapter that requires the OGA to give the applicant an opportunity to be heard has effect after the assignment or assignation as requiring the OGA to give B an opportunity to be heard (whether or not the applicant was heard under that provision before the assignment or assignation).
- (5) Subsection (3) does not apply in relation to any notice given under section 87 before the assignment or assignation (and, accordingly, the person to whom the notice was given remains under an obligation to comply with it).
- (6) Any information relating to the application obtained by the OGA before the assignment or assignation from any person who at the time was the applicant may be disclosed to B.
- (7) Before disclosing any such information to B, the OGA must remove any information which the OGA considers may prejudice the commercial interests of the person from whom the information was obtained.

#### Textual Amendments

**F19** Ss. 89A 89B inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), [ss. 71\(4\)](#), 84(3); [S.I. 2016/920](#), reg. 2(c)



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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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## 89B Transfers of ownership

- (1) This section applies where the ownership of a pipeline or facility that is the subject of an application under section 82, or to which a notice under subsection (11) of that section relates, is transferred from one person (“C”) to another (“D”).
- (2) For the purposes of this Chapter—
  - (a) anything done (or treated as done) by or in relation to C in connection with C's ownership of the pipeline or facility is treated after the transfer as having been done by or in relation to D, and
  - (b) any obligations imposed or rights conferred (or treated as imposed or conferred) by or under this Chapter on C in connection with C's ownership of the pipeline or facility are treated after the transfer as imposed or conferred on D.

This subsection is subject to subsections (3) and (4) and does not apply for the purposes of subsections (5) and (6).

- (3) Any provision of this Chapter that requires the OGA to give the owner of the pipeline or facility an opportunity to be heard has effect after the transfer as requiring the OGA to give D an opportunity to be heard (whether or not the owner was heard under that provision before the transfer).
- (4) Subsection (2) does not affect the obligation to comply with any notice given under section 87 before the transfer (and, accordingly, the person to whom the notice was given remains under an obligation to comply with it).
- (5) Any information relating to the application obtained by the OGA before the transfer from any person who at the time was the owner may be disclosed to D.
- (6) Before disclosing any such information to D, the OGA must remove any information which the OGA considers may prejudice the commercial interests of the person from whom the information was obtained.]

### Textual Amendments

**F19** Ss. 89A 89B inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), ss. **71(4)**, 84(3); S.I. 2016/920, reg. 2(c)

## 90 Interpretation

- (1) In this Chapter—
    - “foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;
    - “gas” means any substance which is or, if it were in a gaseous state, would be gas within the meaning of Part 1 of the Gas Act 1986;
    - “gas processing facility” means any facility which—
      - (a) carries out gas processing operations in relation to piped gas;
      - (b) is operated otherwise than by a gas transporter; and
      - (c) is not an LNG import or export facility (within the meaning of section 12 of the Gas Act 1995);
- [<sup>F20</sup>“the OGA” means the Oil and Gas Authority;]

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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“oil processing facility” means any facility which carries out oil processing operations;

“payments” means payments in money or money's worth;

“petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998, and includes petroleum that has undergone any processing;

“piped gas” means gas which—

- (a) originated from a petroleum production project; and
- (b) has been conveyed only by means of pipes;

“pipeline” means a pipe or system of pipes for the conveyance of any thing;

“upstream petroleum pipeline” means a pipeline or one of a network of pipelines—

- (a) which is operated or constructed as part of a petroleum production project and is not a carbon dioxide pipeline;
- (b) which is used to convey petroleum from the site of one or more such projects—
  - (i) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
  - (ii) directly to a place outside Great Britain;
  - (iii) directly to a terminal; or
  - (iv) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal; or
- (c) which is used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises.

(2) For the purposes of this section—

“carbon dioxide pipeline” means—

- (a) a pipeline used to convey carbon dioxide to a carbon dioxide storage site; or
- (b) a pipeline which is not being used for any purpose but which is intended to be used to convey carbon dioxide to such a site;

“carbon dioxide storage site” means a facility—

- (a) for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); and
- (b) in respect of the use of which a person is required to have a licence under section 18 of the Energy Act 2008;

“gas processing operation” means any of the following operations—

- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;
- (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water;
- (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,
- (d) separating, purifying, blending, odourising or compressing gas for the purpose of—

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
  - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
- (e) loading gas—
  - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
  - (ii) piped from such a facility,

for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);

“gas transporter” has the meaning given by section 7(1) of the Gas Act 1986;

“oil processing operations” means any of the following operations—

- (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
- (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
- (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);

“petroleum production project” means a project carried out by virtue of a licence granted under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;

“terminal” includes—

- (a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
- (b) oil processing facilities;
- (c) gas processing facilities; and
- (d) a facility for the reception of gas prior to its conveyance to a place outside Great Britain.

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#### Textual Amendments

**F20** Words in s. 90(1) inserted (1.10.2016) by [Energy Act 2016 \(c. 20\)](#), s. 84(3), [Sch. 1 para. 72](#); [S.I. 2016/920](#), reg. 2(a)

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#### Commencement Information

**I9** S. 90 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with art. 4)

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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## 91 Meaning of “associate” for the purposes of section 82

- (1) For the purposes of section 82(7)(d) and (9)(a) a person is an associate of another if—
- (a) either or both of them is a body corporate, and
  - (b) one of them controls the other, or both are controlled by the same person or persons,
- and subsections (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).
- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
- (a) one half or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
  - (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
- (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interests in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of subsections (2) to (5), A controls B, A shall be taken to possess—
- (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

### Modifications etc. (not altering text)

**C4** S. 91 applied by 1995 c. 45, s. 12(7) (as substituted (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), **ss. 92(12), 121(1)**; [S.I. 2012/873](#), **art. 2(b)(ii)**)

### Commencement Information

**I10** S. 91 in force at 21.3.2012 by [S.I. 2012/873](#), **art. 2(b)(i)** (with **art. 4**)

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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## CHAPTER 4

### DOWNSTREAM GAS PROCESSING FACILITIES

#### **92 Acquisition of rights to use gas processing facilities for downstream purposes**

- (1) Section 12 of the Gas Act 1995 (acquisition of rights to use gas processing facilities) is amended as follows.
- (2) In the heading at the end insert “ for downstream purposes ”.
- (3) For “the Secretary of State” (in each place those words occur) substitute “ the Authority ”.
- (4) In subsection (1)—
  - (a) in the words before paragraph (a), after “gas processing facility” insert “ which processes gas for a downstream purpose ”;
  - (b) in that paragraph for “on that person's behalf” substitute “ for such a purpose ”.
- (5) After subsection (1) insert—

“(1ZA) At least two months before publishing those conditions or any changes to them under subsection (1), the owner of the facility must—

  - (a) publish a draft of the proposed conditions or changes; and
  - (b) inform any person who has a right to have gas processed by the facility that the draft has been published.

(1ZB) The owner of the facility must take into account any representations received about the proposed conditions or changes before publishing them, or a modified version of them, as final conditions or changes under subsection (1).”
- (6) In subsection (1B) for “on his behalf” substitute “ for a downstream purpose ”.
- (7) In subsection (1D)—
  - (a) omit the “and” immediately preceding paragraph (c);
  - (b) after paragraph (c) insert “; and
  - (d) that the gas is to be processed for a downstream purpose”.
- (8) In subsection (1G) for “he” substitute “ it ”.
- (9) In subsection (2)(b) for “his” substitute “ its ”.
- (10) For subsections (5) and (5A) substitute—

“(5) Sections 28 to 30F of the 1986 Act (enforcement of relevant requirements etc) apply in relation to the owner of a gas processing facility as if—

  - (a) references to “a licence holder” were references to the owner of the facility; and
  - (b) references to a “relevant requirement” were references to a requirement imposed on the owner under this section.

(5A) For the purposes of this section, gas is processed for “a downstream purpose” if it is processed with a view to its being put into a gas storage facility, an

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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LNG import or export facility, a gas interconnector or a distribution system pipeline.”

(11) In subsection (6)—

(a) in the definition of “gas processing facility” for the words from “carries” to the end substitute “—

(a) carries out gas processing operations;

(b) is operated otherwise than by a gas transporter; and

(c) is not an LNG import or export facility;”;

(b) insert, in the appropriate place, the following definitions—

““authorised transporter” has the same meaning as in Part 1 of the 1986 Act;”;

““the Authority” means the Gas and Electricity Markets Authority;”;

““distribution system operator” has the meaning given by Article 2(6) of Directive [2009/73/EC](#) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive [2003/55/EC](#);”;

““distribution system pipeline” means a pipeline operated by an authorised transporter who is a distribution system operator;”;

““gas interconnector” has the same meaning as in Part 1 of the 1986 Act;”;

““gas storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

(a) the storage in porous strata, or in cavities in strata, of gas which has been, or will be, conveyed in a pipeline system operated by the holder of a licence under section 7 or 7ZA of the 1986 Act;

(b) the storage of liquid gas which, if regasified, would be suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the 1986 Act;

but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in the definition of “LNG import or export facility”;”;

““LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for—

(a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA of the 1986 Act, or the liquefaction of gas for the purpose of its export from Great Britain; and

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;”;

““storage”, in relation to liquid gas in a gas storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a gas storage facility, shall be construed accordingly;”.

(12) For subsection (7) substitute—

“(7) Section 91 of the Energy Act 2011 (meaning of “associate”) applies for the purposes of subsection (3) of this section as it applies for the purposes of section 82(7)(d) and (9)(a) of that Act.”

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**Commencement Information**

**III** S. 92 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(ii)

## CHAPTER 5

### SPECIAL ADMINISTRATION

#### *Special administration under the Energy Act 2004*

#### **93 Amendment of section 166 of the Energy Act 2004**

(1) Section 166 of the Energy Act 2004 (indemnities) is amended as follows.

(2) After subsection (3) insert—

“(3AA) As soon as practicable after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.”

(3) After subsection (6) insert—

“(6A) Where a sum has been paid out by the Secretary of State in consequence of an indemnity agreed to under this section, the Secretary of State must lay a statement relating to that sum before Parliament—

- (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
- (b) (except where subsection (4) does not apply in the case of the sum) as soon as practicable after the end of each subsequent relevant financial year.

(6B) In relation to a sum paid out in consequence of an indemnity, a financial year is a relevant financial year for the purposes of subsection (6A) unless—

- (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.”

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013](#) (S.I. 2013/1046), [rules 1](#), **205(2)** (with [rules 3](#), 208)

*Special administration under this Chapter*

**94 Energy supply company administration orders**

- (1) An energy supply company administration order (referred to in this Chapter as an “esc administration order”) is an order which—
  - (a) is made by the court in relation to an energy supply company; and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of an esc administration order is the energy administrator of the company.
- (3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of an energy administrator, so as to achieve the objective set out in section 95.
- (4) In relation to an esc administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In this Chapter—
 

“energy supply company” means a company which is the holder of a relevant licence; and

“relevant licence” means—

  - (a) a licence granted under section 7A(1)(a) or (b) of the Gas Act 1986 to supply gas, or
  - (b) a licence granted under section 6(1)(d) of the Electricity Act 1989 to supply electricity.

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013](#) (S.I. 2013/1046), [rules 1](#), **205(2)** (with [rules 3](#), 208)

**95 Objective of an energy supply company administration**

- (1) The objective of an energy supply company administration is to secure—
  - (a) that energy supplies are continued at the lowest cost which it is reasonably practicable to incur; and



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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (b) that it becomes unnecessary, by one or both of the following means, for the esc administration order to remain in force for that purpose.
- (2) Those means are—
  - (a) the rescue as a going concern of the company subject to the esc administration order; and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
  - (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the esc administration order, to two or more different companies,of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy supply company administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
  - (a) a transfer of the undertaking of the company subject to the esc administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of an energy supply company administration may be achieved by transfers falling within subsection (3) to the extent only that—
  - (a) the rescue as a going concern of the company subject to the esc administration order is not reasonably practicable or is not reasonably practicable without such transfers;
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
  - (c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them; or
  - (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

**96 Application of certain provisions of the Energy Act 2004 in relation to esc administration orders**

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to an esc administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).
- (2) In the application of those provisions generally—

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- (a) for “energy administration”, in each place where it occurs, substitute “ energy supply company administration ”;
  - (b) for “a protected energy company”, in each place where it occurs, substitute “ an energy supply company ”.
- (3) In the application of Schedule 20—
- (a) in paragraph 32(d), for the words from “ “ “energy administration application”” to “Energy Act 2004” substitute “ “ “energy supply company administration application” means an application to the court for an energy supply company administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 96 of the Energy Act 2011”;
  - (b) in paragraph 32(e), for “section 155 of the Energy Act 2004” substitute “ section 95 of the Energy Act 2011 ”;
  - (c) in paragraph 36, for “section 154(4) of this Act” substitute “ section 94(4) of the Energy Act 2011 ”;
  - (d) in paragraph 43, after “the Energy Act 2004” insert “ and section 96 of the Energy Act 2011 ”;
  - (e) in paragraph 44(5), after “the Energy Act 2004” insert “ and section 96 of the Energy Act 2011 ”;
  - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “ as applied by section 96 of the Energy Act 2011 ”;
  - (g) in paragraph 47, after “Part 1 of this Schedule” insert “ and section 96 of the Energy Act 2011 ”.
- (4) In the application of Schedule 21—
- (a) in paragraph 1(b), for “section 155(3)” substitute “ section 95(3) of the Energy Act 2011 ”;
  - (b) in paragraph 12, for “section 155” substitute “ section 95 of the Energy Act 2011 ”.
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)—
- (a) insert, at the appropriate places, the following definitions—
    - ““energy supply company” has the meaning given by section 94(5) of the Energy Act 2011;”;
    - ““energy supply company administration order” has the meaning given by section 94(1) of the Energy Act 2011;”;
    - ““energy supply company administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 96 of the Energy Act 2011;”;
    - ““objective of the energy supply company administration” is to be construed in accordance with section 95 of the Energy Act 2011;”;
  - (b) in the definition of “energy administrator” for “section 154(2)” substitute “ section 94(2) of the Energy Act 2011 ”;
  - (c) in the definition of “relevant licence” for “section 154(5)” substitute “ section 94(5) of the Energy Act 2011 ”.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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**Modifications etc. (not altering text)**

- C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

**97 Conduct of administration, transfer schemes, etc**

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), after “Chapter”, in the second place where it appears, insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

**Modifications etc. (not altering text)**

- C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

**98 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, the Secretary of State may make—
  - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must publish every modification made under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) A modification under subsection (1)(a) 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 Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (7) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Gas and Electricity Markets Authority must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The Secretary of State's powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (9) In section 33(1) of the Utilities Act 2000 (standard conditions of generation, distribution and supply licences under Part 1 of the Electricity Act 1989), after “76” (as inserted by section 77(5) of this Act) insert “ or 98 ”.
- (10) In section 81(2) of the Utilities Act 2000 (standard conditions of transporter, supply and shipping licences under Part 1 of the Gas Act 1986), after “76” (as inserted by section 77(6) of this Act) insert “ or 98 ”.
- (11) In section 146(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Electricity Act 1989), for “or under this Act” substitute “ , under this Act or under section 98 of the Energy Act 2011 ”.
- (12) In section 150(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Gas Act 1986), for “or under this Act” substitute “ , under this Act or under section 98 of the Energy Act 2011 ”.
- (13) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of gas licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (14) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of electricity licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (15) In this section—
  - (a) references to a gas licence are to a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities relating to gas), and
  - (b) references to an electricity licence are to a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities relating to electricity).

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

## 99 Licence conditions to secure funding of energy supply company administration

- (1) The modifications that may be made under section 98 include, in particular, modifications imposing conditions requiring the holder of the licence—
  - (a) so to modify the charges imposed by the licence holder for anything done by the licence holder in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy supply company administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to the licence holder in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section—
- (a) there is a shortfall in the property available for meeting the costs of an energy supply company administration if, in a case where a company is or has been subject to an energy supply company administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt” in relation to a case in which a company is or has been subject to an energy supply company administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 165 of the Energy Act 2004 as applied by section 96 of this Act;
  - (d) to repay a loan made to the company under that section as so applied, or to pay interest on such a loan;
  - (e) to make a payment under section 166(4) of that Act as so applied; or
  - (f) to make a payment under section 167(5) of that Act as so applied.

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013](#) (S.I. 2013/1046), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

## **100 Modifications under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
- (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002) after “Chapter” insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011, Part 2. (See end of Document for details)*

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**Modifications etc. (not altering text)**

- C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013](#) (S.I. 2013/1046), [rules 1](#), [205\(2\)](#) (with [rules 3](#), 208)

## **101 Power to make further modifications of insolvency legislation**

- (1) The power of the Secretary of State under paragraph 46 of Schedule 20 to the Energy Act 2004 (conduct of energy administration) to make modifications includes power to make such modifications as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter.
- (2) In paragraph 46 of that Schedule, after “Chapter” insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

**Modifications etc. (not altering text)**

- C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013](#) (S.I. 2013/1046), [rules 1](#), [205\(2\)](#) (with [rules 3](#), 208)

## **102 Interpretation of Chapter 5**

- (1) In this Chapter—
  - “business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;
  - “company” means—
    - (a) a company registered under the Companies Act 2006, or
    - (b) an unregistered company;
  - “court”, in relation to a company, means the court—
    - (a) having jurisdiction to wind up the company, or
    - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);
  - “energy administrator” has the meaning given by section 94(2) and is to be construed in accordance with subsection (2) of this section;
  - “energy supply company administration order” has the meaning given by section 94(1);
  - “energy supply company” has the meaning given by section 94(5);
  - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
  - “non-GB company” means a company incorporated outside Great Britain;
  - “objective of the energy supply company administration” is to be construed in accordance with section 95;
  - “relevant licence” has the meaning given by section 94(5);
  - “subsidiary” and “wholly-owned subsidiary” have the meanings given by section 1159 of the Companies Act 2006;

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“unregistered company” means a company that is not registered under the Companies Act 2006.

- (2) In this Chapter references to the energy administrator of a company—
- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 96 of this Act to be the energy administrator of that company; and
  - (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 96 of this Act.

**Modifications etc. (not altering text)**

**C5** Ss. 93-102 modified (E.W.) (7.6.2013) by [The Energy Supply Company Administration Rules 2013 \(S.I. 2013/1046\)](#), [rules 1, 205\(2\)](#) (with [rules 3, 208](#))

## CHAPTER 6

### CONTINENTAL SHELF

#### **103 Revocation etc of designations under Continental Shelf Act 1964**

In section 1(7) of the Continental Shelf Act 1964 (power by Order in Council to designate an area as an area within which rights with respect to the sea bed etc are exercisable), for “revoke Orders for the purpose of consolidating them” substitute “revoke, amend or re-enact Orders”.

**Changes to legislation:**

There are currently no known outstanding effects for the Energy Act 2011, Part 2.