



# Energy Act 2016

## 2016 CHAPTER 20

### PART 2

#### FURTHER FUNCTIONS OF THE OGA RELATING TO OFFSHORE PETROLEUM

### CHAPTER 5

#### SANCTIONS

##### *Power to give sanction notices*

#### **42 Power of OGA to give sanction notices**

- (1) If the OGA considers that a person has failed to comply with a petroleum-related requirement imposed on the person, it may give the person a sanction notice in respect of that failure.
- (2) If the OGA considers that there has been a failure to comply with a petroleum-related requirement imposed jointly on two or more persons, it may give a sanction notice in respect of that failure—
  - (a) to one only of those persons,
  - (b) jointly to two or more of them, or
  - (c) jointly to all of them,but it may not give separate sanction notices to each of them in respect of the failure.
- (3) In this Chapter “petroleum-related requirement” means—
  - (a) a duty imposed under section 9C of the Petroleum Act 1998 to act in accordance with the current strategy or strategies produced under section 9A(2) of that Act for enabling the principal objective to be met,
  - (b) a term or condition of an offshore licence, or
  - (c) a requirement imposed on a person by or under a provision of this Act which, by virtue of the provision, is sanctionable in accordance with this Chapter.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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- (4) In this Chapter “sanction notice” means—
- (a) an enforcement notice (see section 43),
  - (b) a financial penalty notice (see sections 44 to 46),
  - (c) a revocation notice (see section 47), or
  - (d) an operator removal notice (see section 48).
- (5) Sanction notices, other than enforcement notices, may be given in respect of a failure to comply with a petroleum-related requirement even if, at the time the notice is given, the failure to comply has already been remedied.
- (6) Where the OGA gives a sanction notice to a person in respect of a particular failure to comply with a petroleum-related requirement—
- (a) it may, at the same time, give another type of sanction notice to the person in respect of that failure to comply;
  - (b) it may give subsequent sanction notices in respect of that failure only in accordance with section 54 (subsequent sanction notices).
- (7) The OGA's power to give sanction notices under this section is subject to section 49 (duty of OGA to give sanction warning notices).

**Commencement Information**

**II** S. 42 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

*Sanction notices*

**43 Enforcement notices**

- (1) This section contains provision about enforcement notices which may be given under section 42 (failure to comply with a petroleum-related requirement).
- (2) An enforcement notice is a notice which—
- (a) specifies the petroleum-related requirement in question,
  - (b) gives details of the failure to comply with the requirement,
  - (c) informs the person or persons to whom the notice is given that the person or persons must comply with—
    - (i) the petroleum-related requirement, and
    - (ii) any directions included in the notice as mentioned in subsection (3), before the end of the period specified in the notice.
- (3) The notice may include directions as to the measures to be taken for the purposes of compliance with the petroleum-related requirement.
- (4) Requirements imposed by directions included in an enforcement notice as mentioned in subsection (3) are sanctionable in accordance with this Chapter.

**Commencement Information**

**I2** S. 43 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

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*Changes to legislation:* There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)

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#### 44 Financial penalty notices

- (1) This section and sections 45 and 46 contain provision about financial penalty notices which may be given under section 42 (failure to comply with a petroleum-related requirement).
- (2) A financial penalty notice is notice which—
  - (a) specifies the petroleum-related requirement in question,
  - (b) gives details of the failure to comply with the requirement,
  - (c) informs the person or persons to whom the notice is given that the person or persons must—
    - (i) comply with the petroleum-related requirement before the end of a period specified in the notice, in a case where it is appropriate to require such compliance and the failure to comply with the requirement has not already been remedied at the time the notice is given, and
    - (ii) pay the OGA a financial penalty of the amount specified in the notice before the end of a period specified in the notice.
- (3) The period specified under subsection (2)(c)(ii) must not end earlier than the end of the period of 28 days beginning with the day on which the financial penalty notice was given.

#### Commencement Information

**I3** S. 44 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

#### 45 Amount of financial penalty

- (1) The financial penalty payable under a financial penalty notice in respect of a failure to comply with a petroleum-related requirement (whether payable by one person, or jointly by two or more persons) must not exceed £1 million.
- (2) The OGA must—
  - (a) issue guidance as to the matters to which it will have regard when determining the amount of the financial penalty to be imposed by a financial penalty notice, and
  - (b) have regard to the guidance when determining the amount of the penalty in any particular case.
- (3) The OGA may from time to time review the guidance and, if it considers appropriate, revise it.
- (4) Before issuing or revising guidance under this section, the OGA must consult such persons as it considers appropriate.
- (5) The OGA must lay any guidance issued under this section, and any revision of it, before each House of Parliament.
- (6) The OGA must publish any guidance issued under this section, and any revision of it, in such manner as the OGA considers appropriate.
- (7) The Secretary of State may by regulations amend subsection (1) to change the amount specified to an amount not exceeding £5 million.

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

**Commencement Information**

**I4** S. 45 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**46 Payment of financial penalty**

- (1) If a financial penalty notice is given jointly to two or more persons, those persons are jointly and severally liable to pay the financial penalty under it.
- (2) A financial penalty payable under a financial penalty notice is to be recoverable as a civil debt if it is not paid before the end of the period specified under section 44(2)(c)(ii).
- (3) Money received by the OGA under a financial penalty notice must be paid into the Consolidated Fund.

**Commencement Information**

**I5** S. 46 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**47 Revocation notices**

- (1) This section contains provision about revocation notices which may be given under section 42 (failure to comply with a petroleum-related requirement).
- (2) A revocation notice may be given only in respect of a failure to comply with a petroleum-related requirement imposed on a licensee in that capacity.
- (3) Where two or more persons are the licensee in respect of a petroleum licence, the revocation notice may be given jointly to some or all of those persons.
- (4) A revocation notice is a notice which—
  - (a) specifies the petroleum-related requirement in question,
  - (b) gives details of the failure to comply with the requirement,
  - (c) informs the person or persons to whom the notice is given that the petroleum licence held by that person or those persons is to be revoked in relation to that person, or those persons, on the date specified in the notice (“the revocation date”).
- (5) The revocation date must not be earlier than the end of the period of 28 days beginning with the day on which the revocation notice was given.
- (6) A revocation notice may not be given in circumstances where the licence to be revoked in accordance with the notice is one which, on the date the notice is given, the OGA would not have the power to grant.
- (7) Where a licence is revoked in relation to a person in accordance with a revocation notice—
  - (a) the rights granted to the person by the licence cease on the revocation date;
  - (b) the revocation does not affect any obligation or liability imposed on or incurred by the person under the terms and conditions of the licence;

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- (c) the terms and conditions of the licence apply as if the licence had been revoked in accordance with those terms and conditions, subject to section 56(2).
- (8) Where two or more persons are the licensee in respect of a petroleum licence and a revocation notice is given in relation to some of those persons, but not in relation to others (the “continuing licence holders”), the OGA must inform the continuing licence holders that—
- (a) the revocation notice has been given, and
  - (b) the licence will continue to have effect in relation to them following the revocation date.

**Commencement Information**

**I6** S. 47 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**48 Operator removal notices**

- (1) This section contains provision about operator removal notices which may be given under section 42 (failure to comply with a petroleum-related requirement).
- (2) An operator removal notice may be given only in respect of a failure to comply with a petroleum-related requirement imposed on an operator under a petroleum licence in that capacity.
- (3) An operator removal notice is a notice which—
- (a) specifies the petroleum-related requirement;
  - (b) gives details of the failure to comply with the requirement;
  - (c) informs the operator to whom it is given that, with effect from a date specified in the notice (“the removal date”), the licensee under whose licence the operator operates (“the relevant licensee”) is to be required to remove the operator (see subsection (5)).
- (4) The OGA must—
- (a) give a copy of the operator removal notice to the relevant licensee, and
  - (b) require the relevant licensee to remove the operator with effect from the removal date.
- (5) Where a licensee is required to remove an operator from a specified date, the licensee must ensure that, with effect from that date, the operator does not exercise any function of organising or supervising any of the operations of searching for, boring for, or getting petroleum in pursuance of the licensee's petroleum licence.
- (6) The removal date must not be earlier than the end of the period of 28 days beginning with the day on which the operator removal notice was given.
- (7) An operator removal notice may not be given in circumstances where the licence under which the operator operates is one which, on the date the notice is given, the OGA would not have the power to grant.
- (8) A requirement imposed on a licensee under subsection (4)(b) is sanctionable in accordance with this Chapter.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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- (9) In this Chapter, “operator under a petroleum licence” has the same meaning as in Part 1A of the Petroleum Act 1998 (see section 9I of that Act).

**Commencement Information**

**I7** S. 48 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

*Sanction warning notices*

**49 Duty of OGA to give sanction warning notices**

- (1) This section applies where the OGA proposes to give a sanction notice in respect of a failure to comply with a petroleum-related requirement.
- (2) The OGA must give a sanction warning notice in respect of the petroleum-related requirement to—
  - (a) the person or persons to whom it proposes to give a sanction notice, and
  - (b) where it proposes to give an operator removal notice, the relevant licensee (see section 48(3)(c)).
- (3) A sanction warning notice, in respect of a petroleum-related requirement, is a notice which—
  - (a) specifies the petroleum-related requirement,
  - (b) informs the person or persons to whom it is given that the OGA proposes to give a sanction notice in respect of a failure to comply with the requirement,
  - (c) gives details of the failure to comply with the petroleum-related requirement,
  - (d) informs the person or persons to whom it is given that the person or persons may, within the period specified in the notice (“the representations period”), make representations to the OGA in relation to the matters dealt with in the notice.
- (4) The representations period is to be such period as the OGA considers appropriate in the circumstances.
- (5) Subsections (6) and (7) apply where the OGA gives a sanction warning notice to a person or persons in respect of a petroleum-related requirement.
- (6) The OGA must not give a sanction notice to the person or persons in respect of a failure to comply with the requirement until after the end of the representations period specified in the sanction warning notice.
- (7) Having regard to representations made during the representations period specified in the sanction warning notice, the OGA may decide—
  - (a) to give the person or persons a sanction notice in respect of the failure to comply with the requirement detailed in the sanction warning notice under subsection (3)(c),
  - (b) to give the person or persons a sanction notice in respect of a failure to comply with the requirement which differs from the failure detailed in the sanction warning notice under subsection (3)(c), or
  - (c) not to give the person or persons a sanction notice in respect of a failure to comply with the requirement.

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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**Commencement Information**

**18** S. 49 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

*Appeals*

**50 Appeals in relation to sanction notices**

- (1) Where a sanction notice is given under this Chapter in respect of a failure to comply with a petroleum-related requirement, an appeal may be made—
  - (a) under section 51 (on the grounds that there was no such failure to comply);
  - (b) under section 52 (against the sanction imposed by the notice).
- (2) Where an appeal is made in relation to a sanction notice, the notice ceases to have effect until a decision is made by the Tribunal to confirm, vary or cancel the notice.
- (3) Where, on an appeal made in relation to a sanction notice—
  - (a) the Tribunal makes a decision to confirm or vary the notice, and
  - (b) an appeal is or may be made in relation to that decision,the Tribunal, or the Upper Tribunal, may further suspend the effect of the notice pending a decision which disposes of proceedings on such an appeal.

**Commencement Information**

**19** S. 50 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**51 Appeals against finding of failure to comply**

- (1) This section applies where a sanction notice is given in respect of a failure to comply with a petroleum-related requirement.
- (2) An appeal may be made to the Tribunal by the person, or by any of the persons, to whom the notice was given, on the grounds that the person, or persons, did not fail to comply with the petroleum-related requirement.
- (3) On an appeal under this section, the Tribunal may confirm or cancel the sanction notice.
- (4) Where sanction notices are given on more than one occasion in respect of the same failure to comply with a petroleum-related requirement—
  - (a) an appeal under this section may be made only in relation to the sanction notice, or any of the sanction notices, given on the first of those occasions, and
  - (b) appeals in relation to sanction notices given on subsequent occasions in respect of that failure to comply may be made only under section 52 (appeals against sanction imposed).

**Commencement Information**

**110** S. 51 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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## 52 Appeals against sanction imposed

- (1) This section applies where a sanction notice is given in respect of a failure to comply with a petroleum-related requirement.
- (2) An appeal may be made to the Tribunal—
  - (a) by the person, or by any of the persons, to whom the notice was given, and
  - (b) in the case of an operator removal notice under section 48, by the licensee under whose licence the operator operates,
 against any of the decisions of the OGA mentioned in subsection (3) (as to the sanction imposed by the notice) on the grounds mentioned in subsection (4).
- (3) Those decisions are—
  - (a) in a case where an enforcement notice has been given, the decision as to—
    - (i) the measures that are required to be taken for the purposes of compliance with the petroleum-related requirement, or
    - (ii) the period for compliance with the petroleum-related requirement;
  - (b) in a case where a financial penalty notice has been given, the decision—
    - (i) to impose a financial penalty, or
    - (ii) as to the amount of the financial penalty imposed;
  - (c) in a case where a revocation of licence notice has been given, the decision to revoke the licence, whether in relation to some or all of the persons to whom it was granted;
  - (d) in a case where an operator removal notice has been given, the decision to require the removal of the operator.
- (4) The grounds are that the decision of the OGA—
  - (a) was unreasonable, or
  - (b) was not within the powers of the OGA.
- (5) On an appeal under this section against a decision made in relation to an enforcement notice, the Tribunal may—
  - (a) confirm or quash the decision, in the case of a decision as mentioned in subsection (3)(a)(i) (remedial action), or
  - (b) confirm or vary the decision, in the case of a decision as mentioned in subsection (3)(a)(ii) (period for compliance),
 and confirm, vary or cancel the enforcement notice accordingly
- (6) On an appeal under this section against a decision made in relation to a financial penalty notice, the Tribunal may—
  - (a) confirm or quash the decision, in the case of a decision as mentioned in subsection (3)(b)(i) (imposition of penalty), or
  - (b) confirm or vary the decision, in the case of a decision as mentioned in subsection (3)(b)(ii) (amount of penalty),
 and confirm, vary or cancel the financial penalty notice accordingly.
- (7) The Tribunal must have regard to any guidance issued by the OGA under section 45(2)
  - (a) when deciding whether to confirm or vary a decision as to the amount of a financial penalty under subsection (6)(b).
- (8) On an appeal under this section against a decision to revoke a licence or to require the removal of an operator the Tribunal may—



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- (a) confirm the decision,
  - (b) vary the decision by changing the revocation date or the removal date, as the case may be, or
  - (c) quash the decision, and
- confirm, vary or cancel the sanction notice in question accordingly.
- (9) Where a decision is quashed under subsection (5)(a), (6)(a) or (8), the Tribunal may remit the decision to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate.

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**Commencement Information**

**I11** S. 52 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

*Supplementary*

**53 Publication of details of sanctions**

- (1) The OGA may publish details of any sanction notice given in accordance with this Chapter.
- (2) But the OGA may not publish anything that, in the OGA's opinion—
- (a) is commercially sensitive,
  - (b) is not in the public interest to publish, or
  - (c) is otherwise not appropriate for publication.
- (3) If, after details of a sanction notice are published by the OGA, the sanction notice is—
- (a) cancelled on appeal, or
  - (b) withdrawn under section 55,
- the OGA must publish details of the cancellation or withdrawal.

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**Commencement Information**

**I12** S. 53 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**54 Subsequent sanction notices**

- (1) This section applies where the OGA gives a sanction notice in respect of a particular failure to comply with a petroleum-related requirement (whether the notice is given alone or at the same time as another type of sanction notice).
- (2) If the sanction notice given is a revocation notice or an operator removal notice, no further sanction notices may be given in respect of the failure to comply.
- (3) If the sanction notice given is a financial penalty notice which does not require compliance with the petroleum-related requirement, no further sanction notices may be given in respect of the failure to comply.
- (4) Subsection (5) applies if the sanction notice given is—
- (a) an enforcement notice, or

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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- (b) a financial penalty notice which requires compliance with the petroleum-related requirement.
- (5) No further sanction notices may be given in respect of the failure to comply before the end of the period specified under section 43(2)(c) or 44(2)(c)(i), as the case may be (period for compliance with petroleum-related requirement).

**Commencement Information**

**I13** S. 54 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**55 Withdrawal of sanction notices**

- (1) The OGA may, at any time after giving a sanction notice, withdraw the sanction notice.
- (2) If a sanction notice is withdrawn by the OGA—
  - (a) the notice ceases to have effect, and
  - (b) the OGA must notify the following persons of the withdrawal of the notice—
    - (i) the person or persons to whom the notice was given,
    - (ii) in the case of a revocation notice, the persons who were required to be informed of the giving of the revocation notice under section 47(8), and
    - (iii) in the case of an operator removal notice, the licensee under whose licence the operator operates.

**Commencement Information**

**I14** S. 55 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**56 Alternative means of enforcement**

- (1) Where the OGA gives a sanction notice to an offshore licensee in respect of a failure to comply with a petroleum-related requirement, the matter is to be dealt with in accordance with this Chapter.
- (2) Any requirement under the licensee's licence to deal with the matter in a certain way (including by arbitration) does not apply in respect of that failure to comply.

**Commencement Information**

**I15** S. 56 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

*Information*

**57 Sanctions: information powers**

- (1) This section applies for the purposes of an investigation by the OGA which—
  - (a) concerns whether a person has failed to comply with a petroleum-related requirement, and

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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- (b) is carried out for the purpose of enabling the OGA to decide whether to give the person a sanction notice, or on what terms a sanction notice should be given to the person.
- (2) The OGA may by notice in writing, for the purposes of that investigation, require the person to provide specified documents or other information.
- (3) A requirement under subsection (2) only applies to the extent that the documents or information requested are—
  - (a) documents that are in the person's possession or control, or
  - (b) other information that is in the person's possession or control.
- (4) A requirement imposed by a notice under subsection (2) is sanctionable in accordance with this Chapter.
- (5) The documents or information requested—
  - (a) may include documents or information held in any form (including in electronic form);
  - (b) may include documents or information that may be regarded as commercially sensitive;
  - (c) may not include items that are subject to legal privilege.
- (6) The notice must specify—
  - (a) to whom the information is to be provided;
  - (b) where it is to be provided;
  - (c) when it is to be provided;
  - (d) the form and manner in which it is to be provided.
- (7) In this section, “specified” in a notice, means specified, or of a description specified, in the notice.

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**Commencement Information**

**I16** S. 57 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

## **58 Appeals against information requests**

- (1) A person to whom a notice is given under section 57 may appeal against it to the Tribunal on the grounds that—
  - (a) the giving of the notice is not within the powers of the OGA, 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.

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**Commencement Information**

**I17** S. 58 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

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*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)*

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### *The OGA's procedures*

#### **59 Procedure for enforcement decisions**

- (1) The OGA must determine the procedure that it proposes to follow in relation to enforcement decisions.
- (2) That procedure must be designed to secure, among other things, that an enforcement decision is taken—
  - (a) by a person falling within subsection (3), or
  - (b) by two or more persons, each of whom falls within subsection (3).
- (3) A person falls within this subsection if the person was not directly involved in establishing the evidence on which the enforcement decision is based.
- (4) The OGA must issue a statement of its proposals.
- (5) The statement must be published in a way appearing to the OGA to be best calculated to bring the statement to the attention of the public.
- (6) When the OGA takes an enforcement decision, the OGA must follow its stated procedure.
- (7) If the OGA changes its procedure in a material way, it must publish a revised statement.
- (8) A failure of the OGA in a particular case to follow its procedure as set out in the latest published statement does not affect the validity of an enforcement decision taken in that case.
- (9) But subsection (8) does not prevent the Tribunal from taking into account any such failure in considering an appeal under section 51 or 52 in relation to a sanction notice.
- (10) In this section “enforcement decision” means either of the following—
  - (a) a decision to give a sanction notice in respect of a failure to comply with a petroleum-related requirement;
  - (b) a decision as to the details of the sanction to be imposed by the notice.

#### **Commencement Information**

**I18** S. 59 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

### *Interpretation*

#### **60 Sanctions: interpretation**

In this Chapter—

- “operator under a petroleum licence” has the meaning given in section 48(9);
- “petroleum-related requirement” has the meaning given in section 42(3);
- “sanction notice” has the meaning given in section 42(4).

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5. (See end of Document for details)

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**Commencement Information**

**I19** S. 60 in force at 1.10.2016 by S.I. 2016/920, reg. 2(b)

**Changes to legislation:**

There are currently no known outstanding effects for the Energy Act 2016, CHAPTER 5.