



Energy Act 2023

2023 CHAPTER 52

PART 2

CARBON DIOXIDE CAPTURE, STORAGE ETC AND HYDROGEN PRODUCTION, TRANSPORT AND STORAGE

CHAPTER 1

REVENUE SUPPORT CONTRACTS

Key definitions

56 Chapter 1: interpretation

(1) In this Chapter—

“allocation body” has the meaning given by [section 73\(6\)\(d\)](#);

“allocation notification” has the meaning given by [section 75\(3\)](#);

“carbon capture allocation body” has the meaning given by [section 73\(6\)\(b\)](#);

“carbon capture counterparty” has the meaning given by [section 67\(3\)](#);

“carbon capture entity” has the meaning given by [section 67\(7\)](#);

“carbon capture revenue support contract” has the meaning given by [section 67\(2\)](#);

“carbon dioxide transport and storage counterparty” has the meaning given by [section 59\(3\)](#);

“carbon dioxide transport and storage revenue support contract” has the meaning given by [section 59\(2\)](#);

“eligible carbon capture entity” is to be interpreted in accordance with regulations by virtue of [section 68\(4\)](#);

“eligible hydrogen storage provider” is to be interpreted in accordance with [section 64\(4\)](#);

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“eligible hydrogen transport provider” is to be interpreted in accordance with [section 62\(4\)](#);

“eligible low carbon hydrogen producer” is to be interpreted in accordance with regulations by virtue of [section 66\(4\)](#);

“GB gas shipper” means a person who holds a licence under section 7A(2) of the Gas Act 1986;

“hydrogen levy administrator” has the meaning given by [section 69\(6\)](#);

“hydrogen production allocation body” has the meaning given by [section 73\(6\)\(a\)](#);

“hydrogen production counterparty” has the meaning given by [section 65\(3\)](#);

“hydrogen production revenue support contract” has the meaning given by [section 65\(2\)](#);

“hydrogen storage counterparty” has the meaning given by [section 63\(3\)](#);

“hydrogen storage provider” has the meaning given by [section 63\(7\)](#);

“hydrogen storage revenue support contract” has the meaning given by [section 63\(2\)](#);

“hydrogen transport counterparty” has the meaning given by [section 61\(3\)](#);

“hydrogen transport provider” has the meaning given by [section 61\(7\)](#);

“hydrogen transport revenue support contract” has the meaning given by [section 61\(2\)](#);

“low carbon hydrogen producer” has the meaning given by [section 65\(7\)](#);

“Northern Ireland gas shipper” means a person who holds a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)) and who in the opinion of the Secretary of State carries on an activity which is similar to an activity that (in Great Britain) may be authorised by a licence under section 7A(2) of the Gas Act 1986;

“relevant market participant” has the meaning given by [section 70\(8\)](#);

“revenue support contract” has the meaning given by [section 57\(2\)](#);

“revenue support counterparty” has the meaning given by [section 58\(6\)](#);

“revenue support regulations” has the meaning given by [section 57\(4\)](#).

- (2) In this Chapter references to “allocating” a hydrogen production revenue support contract or carbon capture revenue support contract to a person are to be interpreted in accordance with [section 73\(6\)](#).

Commencement Information

II [S. 56](#) in force at Royal Assent, see [s. 334\(2\)\(a\)\(i\)](#)

Provision of revenue support under certain contracts

57 Revenue support contracts

- (1) The Secretary of State may by regulations make provision about revenue support contracts (including the funding of liabilities and costs in relation to such contracts).
- (2) In this Chapter “revenue support contract” means—

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- (a) a carbon dioxide transport and storage revenue support contract (see [section 59\(2\)](#)),
 - (b) a hydrogen transport revenue support contract (see [section 61\(2\)](#)),
 - (c) a hydrogen storage revenue support contract (see [section 63\(2\)](#)),
 - (d) a hydrogen production revenue support contract (see [section 65\(2\)](#)), or
 - (e) a carbon capture revenue support contract (see [section 67\(2\)](#)).
- (3) The provision made by this Chapter is without prejudice to the generality of [subsection \(1\)](#).
- (4) In this Part “revenue support regulations” means regulations under this section.
- (5) Revenue support regulations may—
- (a) make different provision for different cases or circumstances or for different purposes;
 - (b) provide for exemptions or other exceptions to any requirement imposed by the regulations.
- (6) Revenue support regulations may—
- (a) include incidental, supplementary or consequential provision;
 - (b) make transitory or transitional provision or savings.
- (7) Revenue support regulations may confer any function on any person.
- (8) Revenue support regulations may provide for a function conferred on a person to be exercisable on that person’s behalf by another person.
- (9) Regulations of any of the following kinds are subject to the affirmative procedure—
- (a) the first revenue support regulations that make (with or without other provision) provision falling within any of sections [70](#), [71](#), [72](#), [77](#), [78](#), [82](#) or [83](#);
 - (b) revenue support regulations that make (with or without other provision) provision falling within any of sections [58\(2\)](#), [60\(3\)](#), [62\(2\)](#) or [\(4\)](#), [64\(2\)](#) or [\(4\)](#), [66\(2\)](#) or [\(4\)](#), [68\(2\)](#) or [\(4\)](#), [75](#), [76](#), [81\(4\)](#) or [84](#).
- (10) Any other revenue support regulations are subject to the negative procedure.
- (11) If, apart from this subsection, a draft of an instrument containing revenue support regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.

Commencement Information

I2 [S. 57](#) in force at Royal Assent for specified purposes, see [s. 334\(2\)\(a\)\(ii\)](#)

I3 [S. 57](#) in force at 26.12.2023 in so far as not already in force, see [s. 334\(3\)\(b\)](#)

Duties of revenue support counterparty

58 Duties of revenue support counterparty

- (1) A revenue support counterparty must act in accordance with—
- (a) any direction given by the Secretary of State by virtue of this Chapter;

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- (b) any provision included in revenue support regulations.
- (2) Revenue support regulations may make provision—
- (a) to require a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract;
 - (b) specifying things that a revenue support counterparty may or must do, or things that a revenue support counterparty may not do;
 - (c) conferring on the Secretary of State further powers to direct a revenue support counterparty to do, or not to do, things specified in the regulations or the direction.
- (3) The provision that may be made by virtue of [subsection \(2\)\(b\)](#) or [\(c\)](#) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to—
- (a) the determination of an application for a modification agreement under [section 78](#);
 - (b) the enforcement of obligations under a revenue support contract;
 - (c) a variation or termination of a revenue support contract;
 - (d) the settlement or compromise of a claim under a revenue support contract;
 - (e) the conduct of legal proceedings relating to a revenue support contract;
 - (f) the exercise of rights under a revenue support contract.
- (4) A revenue support counterparty must exercise the functions conferred by or by virtue of this Chapter so as to ensure that it can meet its liabilities under any revenue support contract to which it is a party.
- (5) Revenue support regulations must include such provision as the Secretary of State considers necessary so as to ensure that a carbon dioxide transport and storage counterparty, hydrogen transport counterparty, hydrogen storage counterparty, hydrogen production counterparty or carbon capture counterparty can meet its liabilities under any carbon dioxide transport and storage revenue support contract, hydrogen transport revenue support contract, hydrogen storage revenue support contract, hydrogen production revenue support contract or (as the case may be) carbon capture revenue support contract to which it is a party.
- (6) In this Chapter “revenue support counterparty” means—
- (a) a carbon dioxide transport and storage counterparty (see [section 59\(3\)](#)),
 - (b) a hydrogen transport counterparty (see [section 61\(3\)](#)),
 - (c) a hydrogen storage counterparty (see [section 63\(3\)](#)),
 - (d) a hydrogen production counterparty (see [section 65\(3\)](#)), or
 - (e) a carbon capture counterparty (see [section 67\(3\)](#)).

Commencement Information

- I4** [S. 58](#) in force at Royal Assent for specified purposes, see [s. 334\(2\)\(a\)\(ii\)](#)
- I5** [S. 58](#) in force at 26.12.2023 in so far as not already in force, see [s. 334\(3\)\(b\)](#)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

Carbon dioxide capture, storage etc and hydrogen production, transport and storage

59 Designation of carbon dioxide transport and storage counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for carbon dioxide transport and storage revenue support contracts.
- (2) A “carbon dioxide transport and storage revenue support contract” is a contract in relation to which both the following paragraphs apply—
 - (a) the contract is between a carbon dioxide transport and storage counterparty and the holder of a licence under [section 7](#);
 - (b) the contract was entered into by a carbon dioxide transport and storage counterparty in pursuance of a direction given to it under [section 60\(1\)](#).
- (3) A person designated under [subsection \(1\)](#) is referred to in this Chapter as a “carbon dioxide transport and storage counterparty”.
- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under [subsection \(1\)](#), but only if the Secretary of State considers it necessary for the purposes of ensuring that—
 - (a) liabilities under a carbon dioxide transport and storage revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a carbon dioxide transport and storage revenue support contract continue to operate, or
 - (c) directions given to a carbon dioxide transport and storage counterparty continue to have effect.
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of all rights and liabilities under any carbon dioxide transport and storage revenue support contract to which the person who has ceased to be a carbon dioxide transport and storage counterparty was a party.

Commencement Information

16 [S. 59](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

60 Direction to offer to contract with licence holder

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a carbon dioxide transport and storage counterparty to offer to contract with an eligible person specified in the direction, on terms specified in the direction.
- (2) The following are “eligible” persons for the purposes of [this section](#)—
 - (a) the holder of a licence under [section 7](#), or
 - (b) a person who is to be granted a licence under [section 7](#) (and has been notified of that by the Secretary of State or the GEMA).

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (3) Revenue support regulations may make further provision about a direction under this section and in particular about—
- (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction.

Commencement Information

I7 S. 60 in force at 26.12.2023, see s. 334(3)(b)

Hydrogen transport

61 Designation of hydrogen transport counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for hydrogen transport revenue support contracts.
- (2) A “hydrogen transport revenue support contract” is a contract to which a hydrogen transport counterparty is a party and which was entered into by a hydrogen transport counterparty in pursuance of a direction given to it under [section 62\(1\)](#).
- (3) A person designated under [subsection \(1\)](#) is referred to in this Chapter as a “hydrogen transport counterparty”.
- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (5) The Secretary of State may exercise the power of designation so that more than one designation has effect under [subsection \(1\)](#), but only if the Secretary of State considers it necessary for the purposes of ensuring that—
 - (a) liabilities under a hydrogen transport revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a hydrogen transport revenue support contract continue to operate, or
 - (c) directions given to a hydrogen transport counterparty continue to have effect.
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of all rights and liabilities under any hydrogen transport revenue support contract to which the person who has ceased to be a hydrogen transport counterparty was a party.
- (7) In this Chapter “hydrogen transport provider” means a person who carries on (or is to carry on) in the United Kingdom activities of transporting hydrogen.
- (8) In [subsection \(7\)](#) the reference to carrying on activities in the United Kingdom includes carrying on activities in, above or below—
 - (a) the territorial sea adjacent to the United Kingdom;
 - (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004);
 - (c) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

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- (9) In [subsection \(7\)](#) “transporting hydrogen” includes transporting a compound, of which hydrogen is an element, which revenue support regulations specify as a qualifying compound for the purposes of this section.

Commencement Information

I8 [S. 61](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

62 Direction to offer to contract with eligible hydrogen transport provider

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a hydrogen transport counterparty to offer to contract with an eligible hydrogen transport provider specified in the direction, on terms specified in the direction.
- (2) Revenue support regulations may make further provision about a direction under this section and in particular about—
- (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction.
- (3) Provision falling within [subsection \(2\)](#) may include provision for calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (4) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a hydrogen transport provider.
- (5) Regulations within [subsection \(4\)](#) may in particular make provision by reference to standards or other published documents (as they have effect from time to time).

Commencement Information

I9 [S. 62](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Hydrogen storage

63 Designation of hydrogen storage counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for hydrogen storage revenue support contracts.
- (2) A “hydrogen storage revenue support contract” is a contract to which a hydrogen storage counterparty is a party and which was entered into by a hydrogen storage counterparty in pursuance of a direction given to it under [section 64\(1\)](#).
- (3) A person designated under [subsection \(1\)](#) is referred to in this Chapter as a “hydrogen storage counterparty”.
- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (5) The Secretary of State may exercise the power of designation so that more than one designation has effect under [subsection \(1\)](#), but only if the Secretary of State considers it necessary for the purposes of ensuring that—
 - (a) liabilities under a hydrogen storage revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a hydrogen storage revenue support contract continue to operate, or
 - (c) directions given to a hydrogen storage counterparty continue to have effect.
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of all rights and liabilities under any hydrogen storage revenue support contract to which the person who has ceased to be a hydrogen storage counterparty was a party.
- (7) In this Chapter “hydrogen storage provider” means a person who carries on (or is to carry on) in the United Kingdom activities of storing hydrogen.
- (8) In [subsection \(7\)](#) the reference to carrying on activities in the United Kingdom includes carrying on activities in, above or below—
 - (a) the territorial sea adjacent to the United Kingdom;
 - (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004);
 - (c) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (9) In [subsection \(7\)](#) “storing hydrogen” includes storing a compound, of which hydrogen is an element, which revenue support regulations specify as a qualifying compound for the purposes of this section.

Commencement Information

I10 [S. 63](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

64 Direction to offer to contract with eligible hydrogen storage provider

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a hydrogen storage counterparty to offer to contract with an eligible hydrogen storage provider specified in the direction, on terms specified in the direction.
- (2) Revenue support regulations may make further provision about a direction under this section and in particular about—
 - (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction.
- (3) Provision falling within [subsection \(2\)](#) may include provision for calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (4) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a hydrogen storage provider.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (5) Regulations within [subsection \(4\)](#) may in particular make provision by reference to standards or other published documents (as they have effect from time to time).

Commencement Information

I11 [S. 64](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Hydrogen production

65 Designation of hydrogen production counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for hydrogen production revenue support contracts.
- (2) A “hydrogen production revenue support contract” is a contract to which a hydrogen production counterparty is a party and which was entered into by a hydrogen production counterparty in pursuance of a direction given to it under [section 66\(1\)](#) or a notification given to it under [section 75\(1\)](#).
- (3) A person designated under [subsection \(1\)](#) is referred to in this Chapter as a “hydrogen production counterparty”.
- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (5) The Secretary of State may exercise the power of designation so that more than one designation has effect under [subsection \(1\)](#), but only if the Secretary of State considers it necessary for the purposes of ensuring that—
 - (a) liabilities under a hydrogen production revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a hydrogen production revenue support contract continue to operate, or
 - (c) directions given to a hydrogen production counterparty continue to have effect.
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of all rights and liabilities under any hydrogen production revenue support contract to which the person who has ceased to be a hydrogen production counterparty was a party.
- (7) In this Chapter—

“low carbon hydrogen producer” means a person who carries on (or is to carry on) in the United Kingdom activities of producing hydrogen which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;

“greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.
- (8) In [subsection \(7\)](#) the reference to carrying on activities in the United Kingdom includes carrying on activities in, above or below—
 - (a) the territorial sea adjacent to the United Kingdom;

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- (b) waters in a Renewable Energy Zone (within the meaning of Chapter 2 of Part 2 of the Energy Act 2004).

Commencement Information

I12 S. 65 in force at Royal Assent, see s. 334(3)(a)(iii)

66 Direction to offer to contract with eligible low carbon hydrogen producer

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a hydrogen production counterparty to offer to contract with an eligible low carbon hydrogen producer specified in the direction, on terms specified in the direction.
- (2) Revenue support regulations may make further provision about a direction under this section and in particular about—
 - (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction.
- (3) Provision falling within [subsection \(2\)](#) may include provision for—
 - (a) the determination of a matter on a competitive basis,
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (4) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a low carbon hydrogen producer.
- (5) Regulations within [subsection \(4\)](#) may in particular make provision by reference to standards or other published documents (as they have effect from time to time).

Commencement Information

I13 S. 66 in force at Royal Assent, see s. 334(3)(a)(iii)

Carbon capture

67 Designation of carbon capture counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be—
 - (a) a counterparty for carbon capture revenue support contracts;
 - (b) a counterparty for any one or more descriptions of carbon capture revenue support contract.
- (2) A “carbon capture revenue support contract” is a contract to which a carbon capture counterparty is a party and which was entered into by a carbon capture counterparty in pursuance of a direction given to it under [section 68\(1\)](#) or a notification given to it under [section 75\(2\)](#).

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (3) A person designated under [subsection \(1\)](#) is referred to in this Chapter as a “carbon capture counterparty”.
- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (5) The Secretary of State may—
- exercise the power under paragraph (a) of [subsection \(1\)](#) so that more than one designation has effect under that paragraph;
 - exercise the power under [paragraph \(b\)](#) of that subsection so that more than one designation has effect in respect of any description of carbon capture revenue support contract.
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of all rights and liabilities under any carbon capture revenue support contract to which the person who has ceased to be a carbon capture counterparty was a party.
- (7) In this section—
- “carbon capture entity” means a person who carries on (or is to carry on) in the United Kingdom, with a view to the storage of carbon dioxide, activities of capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that—
- has been produced by commercial or industrial activities,
 - is in the atmosphere, or
 - has dissolved in sea water;
- “storage”, in relation to carbon dioxide, means any storage with a view to the permanent containment of carbon dioxide.
- (8) In [subsection \(7\)](#) the reference to carrying on activities in the United Kingdom includes carrying on activities in, above or below—
- the territorial sea adjacent to the United Kingdom;
 - waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

Commencement Information

I14 [S. 67](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

68 Direction to offer to contract with eligible carbon capture entity

- The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity specified in the direction, on terms specified in the direction.
- Revenue support regulations may make further provision about a direction under this section and in particular about—
 - the circumstances in which a direction may or must be given;
 - the terms that may or must be specified in a direction.
- Provision falling within [subsection \(2\)](#) may include provision for—

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (a) the determination of a matter on a competitive basis,
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (4) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a carbon capture entity.
- (5) Regulations within [subsection \(4\)](#) may in particular make provision by reference to standards or other published documents (as they have effect from time to time).

Commencement Information

I15 [S. 68](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Hydrogen levy

69 Appointment of hydrogen levy administrator

- (1) The Secretary of State may by regulations appoint a person to carry out functions with respect to obligations of relevant market participants under [section 70](#).
- (2) The Secretary of State may exercise the power under [subsection \(1\)](#) so that more than one appointment has effect under that subsection at the same time.
- (3) An appointment may be made only with the consent of the person appointed (except where that person is the Secretary of State).
- (4) An appointment ceases to have effect if the Secretary of State by regulations revokes the appointment.
- (5) As soon as reasonably practicable after a person’s appointment under [subsection \(1\)](#) ceases to have effect, the Secretary of State must make one or more transfer schemes under [section 86](#) to ensure the transfer of any rights and liabilities of that person that the Secretary of State considers appropriate.
- (6) A person appointed under [subsection \(1\)](#) is called a “hydrogen levy administrator”.

Commencement Information

I16 [S. 69](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

70 Obligations of relevant market participants

- (1) Revenue support regulations may make provision for relevant market participants (see [subsection \(8\)](#)) to make payments to a hydrogen levy administrator for the purpose of enabling—
- (a) a hydrogen transport counterparty to make payments under a hydrogen transport revenue support contract or in respect of liabilities incurred in connection with hydrogen transport revenue support contracts;

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (b) a hydrogen storage counterparty to make payments under a hydrogen storage revenue support contract or in respect of liabilities incurred in connection with hydrogen storage revenue support contracts;
 - (c) a hydrogen production counterparty to make payments under a hydrogen production revenue support contract or in respect of liabilities incurred in connection with the contract;
 - (d) a counterparty to a carbon dioxide transport and storage revenue support contract to make payments under that contract, or in respect of liabilities incurred in connection with that contract, for a purpose connected with hydrogen production revenue support contracts.
- (2) Revenue support regulations may make provision for relevant market participants to make payments to a hydrogen levy administrator for the purpose of enabling the hydrogen levy administrator—
 - (a) to meet or reimburse such descriptions of relevant costs (whether of the hydrogen levy administrator or another person) as the Secretary of State considers appropriate;
 - (b) to hold sums in reserve;
 - (c) to cover losses in the case of insolvency or default of a relevant market participant.
- (3) Revenue support regulations may make provision about the method of calculating or determining amounts that are to be paid by a hydrogen levy administrator for a purpose mentioned in subsection (1) or (2), including provision for adjustments or apportionments in cases where an amount required to be paid by a hydrogen levy administrator for such a purpose has not been paid in full.
- (4) Revenue support regulations may make provision to require relevant market participants to provide financial collateral to a hydrogen levy administrator (whether in cash, securities or any other form).
- (5) Revenue support regulations that make provision by virtue of subsection (1) for the payment of sums by relevant market participants must impose on a hydrogen levy administrator a duty in relation to the collection of such sums.
- (6) In subsection (1) a reference to liabilities incurred in connection with a revenue support contract includes liabilities incurred in connection with a contract entered into by the counterparty concerned for a purpose related to that contract.
- (7) In subsection (2) “relevant costs” means any costs in connection with the performance of any function conferred by or by virtue of this Chapter.
- (8) In this Chapter “relevant market participants” means one or more descriptions of persons specified in revenue support regulations, but a description so specified may not include persons other than—
 - (a) GB gas shippers;
 - (b) Northern Ireland gas shippers.
- (9) Revenue support regulations may make provision about eligibility for exemptions from obligations imposed on relevant market participants by regulations within subsections (1) to (4).

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

Commencement Information

I17 S. 70 in force at 26.12.2023, see s. 334(3)(b)

71 Payments to relevant market participants

- (1) Revenue support regulations may make provision about amounts which must be paid—
- (a) by a hydrogen levy administrator to relevant market participants, or
 - (b) by a relevant counterparty—
 - (i) to relevant market participants, or
 - (ii) to a hydrogen levy administrator for the purpose of enabling payments to be made to relevant market participants.
- (2) Regulations by virtue of subsection (1) may make provision—
- (a) for a hydrogen levy administrator to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by—
 - (i) the hydrogen levy administrator, or
 - (ii) a relevant counterparty;
 - (b) for a relevant counterparty to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts which are owed by—
 - (i) the relevant counterparty, or
 - (ii) a hydrogen levy administrator;
 - (c) for the issuing of notices by a hydrogen levy administrator to require the payment by a relevant counterparty of amounts calculated or determined by the hydrogen levy administrator in accordance with paragraph (a)(ii);
 - (d) for the issuing of notices by a relevant counterparty to require the payment by a hydrogen levy administrator of amounts calculated or determined by the relevant counterparty in accordance with paragraph (b)(ii);
 - (e) for the provision of copies of notices such as are mentioned in paragraph (c) or (d) to persons specified in the regulations, or the publication of such notices.
- (3) Revenue support regulations may make provision imposing on a relevant market participant who receives a payment from a hydrogen levy administrator or a relevant counterparty a requirement to secure that customers of the relevant market participant receive, by a time specified in the regulations, such benefit from the payment as may be specified in or determined in accordance with the regulations.
- (4) In this section “relevant counterparty” means any of the following—
- (a) a hydrogen transport counterparty;
 - (b) a hydrogen storage counterparty;
 - (c) a hydrogen production counterparty.

Commencement Information

I18 S. 71 in force at 26.12.2023, see s. 334(3)(b)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

72 Functions of hydrogen levy administrator

- (1) Revenue support regulations may make provision—
 - (a) specifying things that a hydrogen levy administrator may or must do, or things that a hydrogen levy administrator may not do;
 - (b) conferring on the Secretary of State powers to direct a hydrogen levy administrator to do, or not to do, things specified in the regulations or the direction.
- (2) The following provisions of this section are without prejudice to the generality of [subsection \(1\)\(a\)](#).
- (3) Revenue support regulations may make provision—
 - (a) for a hydrogen levy administrator to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts that are owed by a relevant market participant or are to be provided as financial collateral by a relevant market participant;
 - (b) for the issuing of notices by a hydrogen levy administrator to require the payment or provision of such amounts;
 - (c) for the provision of copies of such notices to persons specified in the regulations or the publication of such notices;
 - (d) for the enforcement of obligations imposed by or under the regulations (including provision about interest on late payments and imposing financial penalties);
 - (e) about the resolution of disputes, including provision about arbitration or appeals (which may in particular include provision for the person conducting an arbitration or determining an appeal to order the payment of costs or expenses or compensation);
 - (f) for a hydrogen levy administrator to determine the form and terms of any financial collateral;
 - (g) for a hydrogen levy administrator to hold sums in reserve.
- (4) Provision made by virtue of [subsection \(3\)\(a\)](#) or [section 70\(3\)](#) or [\(9\)](#) or [71\(2\)](#) or [\(3\)](#) may provide for anything that is to be calculated or determined under the regulations to be calculated or determined—
 - (a) by such persons,
 - (b) in accordance with such procedure, and
 - (c) by reference to such matters and to the opinion of such persons,as may be specified in the regulations.
- (5) Provision made by virtue of [subsection \(3\)\(d\)](#) for the imposition of a financial penalty must include provision for a right of appeal against the imposition of the penalty.
- (6) Any sum that—
 - (a) a relevant market participant is required by virtue of revenue support regulations to pay to a hydrogen levy administrator, and
 - (b) has not been paid by the date on which it is required by virtue of revenue support regulations to be paid,may be recovered from the relevant market participant by the hydrogen levy administrator as a civil debt due to it.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (7) Revenue support regulations may make provision about the application of sums held by a hydrogen levy administrator.
- (8) The provision that may be made by virtue of [subsection \(7\)](#) includes provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

Commencement Information

I19 [S. 72](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Allocation of contracts

73 Power to appoint allocation bodies

- (1) The Secretary of State may by regulations appoint—
 - (a) a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts;
 - (b) a person to carry out functions in connection with the allocation of carbon capture revenue support contracts.
- (2) The power under each paragraph of [subsection \(1\)](#) may be exercised so that more than one appointment has effect under that paragraph at the same time.
- (3) An appointment may be made only with the consent of the person appointed (except where that person is the Secretary of State).
- (4) An appointment ceases to have effect if—
 - (a) the Secretary of State by regulations revokes the appointment, or
 - (b) the person withdraws consent.
- (5) Regulations under [subsection \(1\)](#) may make provision with regard to the cessation of an appointment, including—
 - (a) provision requiring a person appointed under [subsection \(1\)](#) to give a period of notice no shorter than a period specified in the regulations when withdrawing their consent to appointment, or otherwise restricting or subjecting to conditions a person’s power under [subsection \(4\)](#) to withdraw consent;
 - (b) provision enabling a person who has ceased to be appointed under [subsection \(1\)](#) to continue to be treated as if they were so appointed, including provision about the purposes for which, the circumstances in which, and the period for which, such a person may be so treated.
- (6) In this Chapter—
 - (a) a person appointed under [subsection \(1\)\(a\)](#) is called a “hydrogen production allocation body”;
 - (b) a person appointed under [subsection \(1\)\(b\)](#) is called a “carbon capture allocation body”;
 - (c) references to “allocating” a hydrogen production revenue support contract or carbon capture revenue support contract to a person are to specifying the person in a notification under [section 75\(1\)](#) or [\(2\)](#) (and references to the “allocation” of such a contract are to be interpreted accordingly);

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (d) “allocation body” means a hydrogen production allocation body or a carbon capture allocation body.
- (7) Regulations under this section, other than regulations under [subsection \(4\)\(a\)](#), are subject to the negative procedure.

Commencement Information

I20 [S. 73](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

74 Standard terms of revenue support contracts

- (1) The Secretary of State may issue standard terms and conditions (“standard terms”) of—
- (a) hydrogen production revenue support contracts;
 - (b) carbon capture revenue support contracts.
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in revenue support regulations.
- (4) The Secretary of State must publish standard terms as issued or revised under this section.
- (5) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under [section 78](#).
- (6) Different standard terms may be issued for different categories of hydrogen production revenue support contract or carbon capture revenue support contract.

Commencement Information

I21 [S. 74](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

75 Allocation notifications

- (1) A hydrogen production allocation body may, in accordance with provision made by revenue support regulations, give a notification to a hydrogen production counterparty specifying—
- (a) an eligible low carbon hydrogen producer, and
 - (b) such other information as may be required for the purpose of making an offer under [section 77](#) to contract with that low carbon hydrogen producer.
- (2) A carbon capture allocation body may, in accordance with provision made by revenue support regulations, give a notification to a carbon capture counterparty specifying—
- (a) an eligible carbon capture entity, and
 - (b) such other information as may be required for the purpose of making an offer under [section 77](#) to contract with that carbon capture entity.
- (3) A notification given under [subsection \(1\)](#) or [\(2\)](#) is called an “allocation notification”.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (4) Revenue support regulations may make further provision about allocation notifications and in particular provision about—
- (a) the circumstances in which an allocation notification may or must be given;
 - (b) the kinds of information that must be specified in an allocation notification in accordance with [subsection \(1\)\(b\)](#) or [\(2\)\(b\)](#);
 - (c) appeals against decisions not to give allocation notifications.

Commencement Information

I22 [S. 75](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

76 Allocation of contracts

- (1) Provision that may be made in revenue support regulations for the purposes of [section 75\(1\)](#) and [\(2\)](#) includes provision about how determinations are to be made as regards—
- (a) which eligible low carbon hydrogen producer a hydrogen production revenue support contract is to be allocated to;
 - (b) which eligible carbon capture entity a carbon capture revenue support contract is to be allocated to.
- (2) Provision made by revenue support regulations falling within [subsection \(1\)](#) may include—
- (a) provision conferring power on the Secretary of State to make rules (an “allocation framework”) about the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts;
 - (b) provision for different periods within which hydrogen production revenue support contracts or carbon capture revenue support contracts are to be allocated (“allocation rounds”);
 - (c) provision for different allocation frameworks to apply in respect of different allocation rounds;
 - (d) provision for the publication of allocation frameworks;
 - (e) provision about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by revenue support regulations falling within [subsection \(2\)](#) may impose requirements on the Secretary of State, including in particular—
- (a) requirements as to the giving of notice before an allocation round is commenced;
 - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by reference to which a limit on the contracts allocated during the round is to be determined).
- (4) An allocation framework may—
- (a) confer functions on an allocation body with respect to the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts;
 - (b) specify targets to be met or taken into account by an allocation body in giving allocation notifications by virtue of [section 75](#), including targets relating to—

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (i) the process used for producing hydrogen or for capturing carbon dioxide;
 - (ii) outputs or capacity (whether in respect of hydrogen production or capture of carbon dioxide);
 - (iii) the geographical location of an applicant's activities;
 - (c) make provision by reference to standards or other published documents (as they have effect from time to time);
 - (d) make any provision that may be made by regulations by virtue of [subsection \(3\)](#).
- (5) An allocation framework may include provision for—
- (a) the determination of a matter on a competitive basis;
 - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework.
- (6) An allocation framework may—
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision and savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of [subsection \(2\)](#) to make an allocation framework includes a power to amend, add to or remove an allocation framework.
- (8) Subsections [\(4\)](#) to [\(7\)](#) are subject to any provision contained in revenue support regulations.

Commencement Information

I23 S. 76 in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

77 Duty to offer to contract following allocation

- (1) Where an allocation notification is given to a hydrogen production counterparty under [section 75\(1\)](#), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible low carbon hydrogen producer specified in the notification on—
- (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible low carbon hydrogen producer for the purposes of the allocation notification (see [section 78](#)).
- (2) Where an allocation notification is given to a carbon capture counterparty under [section 75\(2\)](#), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible carbon capture entity specified in the notification on—
- (a) standard terms, or

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible carbon capture entity for the purposes of the allocation notification (see [section 78](#)).
- (3) Revenue support regulations may make further provision about an offer to contract made under this section, including provision about—
- (a) how a hydrogen production counterparty or carbon capture counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in an allocation notification;
 - (b) the time within which the offer must be made;
 - (c) how the eligible low carbon hydrogen producer or eligible carbon capture entity to whom the offer is made may enter into a hydrogen production revenue support contract or (as the case may be) carbon capture revenue support contract as a result of the offer;
 - (d) what is to happen if the eligible low carbon hydrogen producer or eligible carbon capture entity does not enter into such a contract as a result of the offer.
- (4) In this section, “standard terms”, in relation to an allocation notification, means standard terms published under [section 74](#), determined in accordance with revenue support regulations as the standard terms that are to apply in relation to the allocation notification.

Commencement Information

I24 [S. 77](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

78 Modification of standard terms

- (1) This section applies where a person wishes to be specified as an eligible low carbon hydrogen producer, or an eligible carbon capture entity, in an allocation notification (“the potential allocation notification”).
- (2) A hydrogen production counterparty or (as the case requires) carbon capture counterparty and the person may, in accordance with provision made by revenue support regulations, agree to modify standard terms for the purposes of any offer that would be required under [section 77](#) if the potential allocation notification is given (a “modification agreement”).
- (3) A hydrogen production counterparty or carbon capture counterparty may enter into a modification agreement providing for the modification of any particular standard term only if—
- (a) the counterparty is satisfied that—
 - (i) the effect of the modification is minor, and
 - (ii) the modification is necessary; and
 - (b) the standard term has not been designated under [section 74\(5\)](#) as a term that may not be modified under this section.
- (4) Revenue support regulations may make further provision about modification agreements, including—
- (a) the circumstances in which a person may make an application for a modification agreement;
 - (b) the time by which an application must be made;

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (c) the procedure to be followed, and the information to be given, by the person in making an application;
 - (d) how a hydrogen production counterparty or carbon capture counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary);
 - (e) the time by which determinations must be made;
 - (f) the form of modification agreements.
- (5) Provision made by virtue of [subsection \(4\)\(d\)](#) may include provision under which the counterparty may make alternative proposals for modifications in response to an application.
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

Commencement Information

I25 [S. 78](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

79 Sections 75 to 78: supplementary

Provision made by regulations by virtue of any of sections [75](#) to [78](#) may include provision for—

- (a) the determination of a matter on a competitive basis;
- (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations.

Commencement Information

I26 [S. 79](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

80 Licence conditions regarding functions of certain allocation bodies

- (1) In section 7B of the Gas Act 1986, after subsection (5) insert—

“(5ZA) Without prejudice to the generality of paragraph (a) of subsection (4), conditions for or in connection with the purpose set out in [subsection \(5ZB\)](#) may be included in a licence under section 7AA by virtue of that paragraph.

(5ZB) The purpose is to facilitate or ensure the effective performance (whether in relation to Northern Ireland or any other part of the United Kingdom), at relevant times, of functions of a hydrogen production allocation body under [Chapter 1](#) of [Part 2](#) of the Energy Act 2023.

(5ZC) In [subsection \(5ZB\)](#) “relevant times” means times when the hydrogen production allocation body holds a licence under section 7AA.”

- (2) Where—

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (a) the GEMA proposes by a modification under section 23 of the Gas Act 1986 of a licence under section 7AA of that Act to add, remove or alter a condition such as is mentioned in section 7B(5ZA) of that Act, and
 - (b) that condition relates to functions of a hydrogen production allocation body that are exercisable in relation to Northern Ireland,
- section 23 of that Act has effect as if the persons listed in subsection (4)(b) of that section included the Department for the Economy in Northern Ireland.

Commencement Information

I27 S. 80 in force at 26.12.2023, see s. 334(3)(b)

General provision about counterparties

81 Further provision about designations

- (1) A designation under section 59, 61, 63, 65, or 67 ceases to have effect if—
 - (a) the Secretary of State revokes the designation by notice given to the person designated (in which case the designation ends on the date specified in the notice), or
 - (b) the person withdraws consent to the designation by giving not less than 3 months' notice in writing to the Secretary of State.
- (2) At any time after the first designation under section 59, 61, 63, 65 or 67 has effect, the Secretary of State must, except where the Secretary of State considers it unnecessary or not reasonably practicable to do so, exercise the power to designate so as to ensure that at least one designation has effect under that section.
- (3) The Secretary of State must publish a notice given to a person under—
 - (a) section 59(1), 61(1), 63(1), 65(1) or 67(1), or
 - (b) subsection (1)(a).
- (4) Revenue support regulations may make provision enabling a person who has ceased to be a carbon dioxide transport and storage counterparty, hydrogen transport counterparty, hydrogen storage counterparty, hydrogen production counterparty or carbon capture counterparty to continue to be treated as such a counterparty, including provision about the circumstances in which, and the period for which, such a person may be so treated.

Commencement Information

I28 S. 81(1)-(3) in force at Royal Assent for specified purposes, see s. 334(2)(a)(iv)

I29 S. 81(1)-(3) in force at 26.12.2023 in so far as not already in force, see s. 334(3)(b)

I30 S. 81(4) in force at 26.12.2023, see s. 334(3)(b)

82 Application of sums held by a revenue support counterparty

- (1) Revenue support regulations may make provision for apportioning sums—
 - (a) received by a revenue support counterparty from a hydrogen levy administrator under provision made by virtue of section 70, or

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (b) received by a revenue support counterparty under a revenue support contract, in circumstances where the revenue support counterparty is unable to fully meet its liabilities under a revenue support contract.
- (2) The provision that may be made by virtue of [subsection \(1\)](#) includes provision about the meaning of “unable to fully meet its liabilities under a revenue support contract”.
- (3) In making provision by virtue of [subsection \(1\)](#), the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts that are owed.
- (4) Revenue support regulations may make provision about the application of sums held by a revenue support counterparty.
- (5) The provision that may be made by virtue of [subsection \(4\)](#) includes provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

Commencement Information

I31 [S. 82](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Information and advice

83 Information and advice

- (1) Revenue support regulations may make provision about the provision and publication of information and advice.
- (2) The provision that may be made by virtue of [subsection \(1\)](#) includes provision—
- (a) for the Secretary of State to require a revenue support counterparty, to provide advice to the Secretary of State or any other person, or persons of any description, specified in the regulations;
 - (b) for the Secretary of State to require any party to a revenue support contract to provide information to the Secretary of State or any other person, or persons of any description, specified in the regulations;
 - (c) for the Secretary of State to require any of the following to provide information or advice to the Secretary of State or any other person, or persons of any description, specified in the regulations—
 - (i) a hydrogen levy administrator;
 - (ii) an allocation body;
 - (iii) the GEMA;
 - (iv) any other person or description of persons specified in the regulations;
 - (d) for a revenue support counterparty to require a person specified, or of a description specified, in the regulations to provide information to it;
 - (e) for a hydrogen levy administrator to require—
 - (i) a revenue support counterparty,
 - (ii) an allocation body,
 - (iii) a relevant market participant, or
 - (iv) any other person or description of persons specified in the regulations,
 to provide information to it;

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (f) for an allocation body to require any party to a hydrogen production revenue support contract or carbon capture revenue support contract to provide information to it;
 - (g) for the classification and protection of confidential or sensitive information;
 - (h) for the enforcement of any requirement imposed by virtue of [paragraphs \(a\) to \(g\)](#).
- (3) The prohibition on disclosure of information by—
- (a) section 105(1) of the Utilities Act 2000;
 - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#));
- does not apply to a disclosure required by virtue of this section.

Commencement Information

- I32** [S. 83](#) in force at Royal Assent for specified purposes, see [s. 334\(2\)\(a\)\(v\)](#)
I33 [S. 83](#) in force at 26.12.2023 in so far as not already in force, see [s. 334\(3\)\(b\)](#)

Enforcement

84 Enforcement

- (1) Revenue support regulations may make provision—
- (a) for requirements imposed under the regulations on a GB gas shipper to be enforceable by the GEMA as if they were relevant requirements within the meaning of sections 28 to 300 of that Act;
 - (b) for requirements imposed under the regulations on a person who holds a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)) to be enforceable by the Northern Ireland Authority for Utility Regulation as if they were relevant requirements within the meaning of Part 6 of the Energy (Northern Ireland) Order 2003 ([S.I. 2003/419 \(N.I. 6\)](#)).
- (2) References in subsection (1) to enforcement include enforcement under the terms of a licence mentioned in any of paragraphs (a) and (b) of that subsection.
- (3) Revenue support regulations may make provision for special allocation body requirements (or a subset of such requirements) to be enforceable by the GEMA as if they were relevant requirements within the meaning of sections 28 to 300 of the Gas Act 1986.
- (4) In this section “special allocation body requirements” means requirements imposed by or under revenue support regulations or regulations under [section 73](#) on a hydrogen production allocation body, so far as the requirements relate to times when the body holds a licence under section 7AA of the Gas Act 1986 (including requirements in respect of functions of the body that relate to Northern Ireland).

Commencement Information

- I34** [S. 84](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

Consultation

85 Consultation

- (1) Before making revenue support regulations the Secretary of State must—
 - (a) consult the persons mentioned in [subsection \(2\)](#), and
 - (b) specify a period of not less than 28 days for the purposes of [subsection \(3\)](#).
- (2) The persons to be consulted under [subsection \(1\)](#) are—
 - (a) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;
 - (d) such other persons as the Secretary of State considers appropriate.
- (3) The Secretary of State must consider any representations that are—
 - (a) duly made within the period specified under [subsection \(1\)\(b\)](#) by persons consulted under [subsection \(1\)](#), and
 - (b) not withdrawn.
- (4) Before making regulations under [section 73\(1\)](#) (power to appoint allocation bodies) the Secretary of State must consult—
 - (a) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998,and the Secretary of State must consider any representations duly made by persons consulted under this subsection and not withdrawn.
- (5) Before publishing standard terms under [section 74](#) the Secretary of State must—
 - (a) consult the persons mentioned in [subsection \(6\)](#), and

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (b) specify a period of not less than 28 days for the purposes of subsection (7).
- (6) The persons to be consulted under subsection (5) are—
- (a) the Scottish Ministers, if the standard terms contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the standard terms contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (c) the Department for the Economy in Northern Ireland, if the standard terms contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;
 - (d) such other persons as the Secretary of State considers appropriate.
- (7) The Secretary of State must consider any representations that are—
- (a) duly made within the period specified under subsection (5)(b) by persons consulted under subsection (5), and
 - (b) not withdrawn.
- (8) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

Commencement Information

I35 S. 85 in force at Royal Assent for specified purposes, see s. 334(2)(a)(vi)

I36 S. 85 in force at 26.12.2023 in so far as not already in force, see s. 334(3)(b)

Transfer schemes

86 Transfer schemes

- (1) The Secretary of State may make—
- (a) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a revenue support counterparty to a person who is a revenue support counterparty;
 - (b) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a hydrogen levy administrator to a person who is a hydrogen levy administrator;
 - (c) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a hydrogen levy administrator to the Secretary of State;
 - (d) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be an allocation body to a person who is an allocation body.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (2) In this section—
- “transferee” means—
- (a) in a case within [subsection \(1\)\(a\)](#), the person who is a revenue support counterparty;
 - (b) in a case within [subsection \(1\)\(b\)](#), the person who is a hydrogen levy administrator;
 - (c) in a case within [subsection \(1\)\(c\)](#), the Secretary of State;
 - (d) in a case within [subsection \(1\)\(d\)](#), the person who is an allocation body;
- “transferor” means the person who has ceased to be a revenue support counterparty, a hydrogen levy administrator or an allocation body (as the case may be).
- (3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme.
- (4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (5) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact.
- (6) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
 - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
 - (c) about the continuation of legal proceedings;
 - (d) for transferring property, rights or liabilities that could not otherwise be transferred or assigned;
 - (e) for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (7) Subsection [\(6\)\(b\)](#) does not apply to references in—
- (a) primary legislation, or
 - (b) an instrument made under primary legislation.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (8) A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.
- (9) A transfer scheme may—
- (a) include incidental, supplementary or consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (10) In this section—
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
- “primary legislation” means—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation;
- “property” includes interests of any description;
- “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect.

Commencement Information

I37 S. 86 in force at 26.12.2023, see s. 334(3)(b)

87 Modification of transfer schemes

- (1) The Secretary of State may modify a transfer scheme made under [section 86](#), subject to [subsection \(2\)](#).
- (2) If a transfer under the scheme has taken effect, any modification under [subsection \(1\)](#) that relates to the transfer may be made only with the agreement of the transferor or transferee affected by the modification (or, where both the transferor and transferee are affected, with the agreement of both of them).
- (3) A modification takes effect from such date as the Secretary of State may specify (which may be the date when the original scheme came into effect).
- (4) In this section “transferor” and “transferee” have the same meaning as in [section 86](#).

Commencement Information

I38 S. 87 in force at 26.12.2023, see s. 334(3)(b)

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

General

88 Shadow directors, etc

- (1) The Secretary of State is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—
 - (a) a person occupying the position of director in relation to a [Chapter 1](#) entity;
 - (b) a person in accordance with whose directions or instructions the directors of a [Chapter 1](#) entity are accustomed to act;
 - (c) a person in accordance with whose directions or instructions the members of a [Chapter 1](#) entity which is a limited liability partnership are accustomed to act;
 - (d) exercising any function of management in a [Chapter 1](#) entity;
 - (e) a principal of a [Chapter 1](#) entity.
- (2) An allocation body is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—
 - (a) a person occupying the position of director in relation to a revenue support counterparty;
 - (b) a person in accordance with whose directions or instructions the directors of a revenue support counterparty are accustomed to act;
 - (c) a person in accordance with whose directions or instructions the members of a revenue support counterparty which is a limited liability partnership are accustomed to act;
 - (d) exercising any function of management in a revenue support counterparty;
 - (e) a principal of a revenue support counterparty.
- (3) In this section “[Chapter 1](#) entity” means the following—
 - (a) a revenue support counterparty;
 - (b) a hydrogen levy administrator;
 - (c) an allocation body.

Commencement Information

I39 [S. 88](#) in force at Royal Assent for specified purposes, see [s. 334\(3\)\(a\)\(vi\)](#)

I40 [S. 88](#) in force at 26.12.2023 in so far as not already in force, see [s. 334\(3\)\(b\)](#)

89 Modifications of licences etc for purposes related to levy obligations

- (1) The Secretary of State may modify—
 - (a) a condition of a particular licence under section 7 of the Gas Act 1986 (licensing of gas transporters);
 - (b) the standard conditions incorporated in licences under section 7 of the Gas Act 1986 by virtue of section 8 of that Act;
 - (c) a document maintained in accordance with the conditions of licences under section 7 of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may modify—
 - (a) a condition of a particular licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 ([S.I. 1996/275 \(N.I. 2\)](#)) (licences to convey gas);

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (b) the standard conditions of licences under Article 8(1)(a) of that Order;
 - (c) a document maintained in accordance with the conditions of licences under Article 8(1)(a) of that Order, or an agreement that gives effect to a document so maintained.
- (3) The powers conferred by subsections (1) and (2) may be exercised only for the purpose of facilitating or supporting enforcement of, and administration in connection with, obligations under regulations within section 70 (including facilitation and support by way of allowing or requiring the provision of services).
- (4) Provision included in a licence, or in a document or agreement relating to licences, by virtue of any power under subsection (1) or (2) may in particular include provision of a kind that may be included in revenue support regulations.
- (5) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a power conferred by this section may do anything authorised for licences of that type by—
- (a) section 7B(5)(a), (6) or (7) of the Gas Act 1986, or
 - (b) Article 10(3)(a) to (d), (4), (5) or (6A) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)).
- (6) For the purposes of subsection (5)(b), the provisions referred to in that paragraph are to be read as if references to the Northern Ireland Authority for Utility Regulation included the Secretary of State.
- (7) If under subsection (1) the Secretary of State makes modifications of the standard conditions of a licence, the GEMA must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.
- (8) If under subsection (2) the Secretary of State makes modifications of the standard conditions of a licence, the Northern Ireland Authority for Utility Regulation must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
 - (b) publish the modification.
- (9) 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 it appropriate to consult.
- (10) Subsection (9) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

Commencement Information

141 S. 89 in force at 26.12.2023, see s. 334(3)(b)

90 Electricity system operator and gas system planner licences: modifications

- (1) The Secretary of State may, for the purpose of facilitating or ensuring the effective performance of functions specified in subsection (3), modify—

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (a) the conditions of a licence under section 6(1)(da) of the Electricity Act 1989 (electricity system operator licence);
 - (b) a document maintained in accordance with the conditions of such a licence, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may, for the purpose of facilitating or ensuring the effective performance of functions specified in subsection (3), modify—
- (a) the conditions of a licence under section 7AA of the Gas Act 1986 (gas system planner licence);
 - (b) a document maintained in accordance with the conditions of such a licence, or an agreement that gives effect to a document so maintained.
- (3) The functions referred to in subsections (1) and (2) are—
- (a) functions of hydrogen production allocation bodies, and
 - (b) other functions under this Chapter which are related to such functions.
- (4) Modifications under subsections (1) and (2) may only make provision in relation to times when the person holding the licence is a hydrogen production allocation body.
- (5) The provision referred to in subsection (4) includes consequential or transitional provision in relation to times when it is no longer the case that the person holding the licence is a hydrogen production allocation body.
- (6) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a power under this section may in particular—
- (a) include provision of any kind that may be included in revenue support regulations or regulations under [section 73](#);
 - (b) do any of the things authorised for licences of that type by—
 - (i) section 7B(5)(a), (5ZA), (6) or (7) of the Gas Act 1986, or
 - (ii) section 7(3), (4), (5) or (6A) of the Electricity Act 1989.
- (7) Before making a modification under this section the Secretary of State must consult—
- (a) the holder of any licence being modified;
 - (b) the GEMA;
 - (c) such other persons as the Secretary of State considers it appropriate to consult.
- (8) Subsection (7) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

Commencement Information

I42 [S. 90](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

91 **Sections 89 and 90: supplementary**

- (1) In this section “relevant power” means a power conferred by—
- (a) subsection (1) or (2) of [section 89](#), or
 - (b) [section 90](#).
- (2) Before making modifications under a relevant power, the Secretary of State must lay a draft of the modifications before Parliament.

Changes to legislation: There are currently no known outstanding effects for the Energy Act 2023, Chapter 1. (See end of Document for details)

- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power—
 - (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
 - (b) may be exercised differently in different cases or circumstances;
 - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power—
 - (a) may make different provision for different cases;
 - (b) need not relate to the activities authorised by the licence.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) A modification made under a relevant power 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 the Gas (Northern Ireland) Order 1996.
- (12) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.
- (13) In section 81 of the Utilities Act 2000 (standard conditions of gas licences), in subsection (2), after “Energy Prices Act 2022” insert “or under [section 89](#) or sections [245](#) to [247](#) of the Energy Act 2023”.

Commencement Information

I43 [S. 91](#) in force at 26.12.2023, see [s. 334\(3\)\(b\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Energy Act 2023, Chapter 1.