



# Energy Act 2023

CHAPTER 52

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Explanatory Notes have been produced to assist in the understanding of this Act and are available separately

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# Energy Act 2023

## CHAPTER 52

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# Energy Act 2023

## 2023 CHAPTER 52

An Act to make provision about energy production and security and the regulation of the energy market, including provision about the licensing of carbon dioxide transport and storage; about commercial arrangements for carbon capture and storage and for hydrogen production and transportation; about new technology, including low-carbon heat schemes and hydrogen grid trials; about the Independent System Operator and Planner; about gas and electricity industry codes; about financial support for persons carrying on energy-intensive activities; about heat networks; about energy smart appliances and load control; about the energy performance of premises; about energy savings opportunity schemes; about the resilience of the core fuel sector; about offshore energy production, including environmental protection, licensing and decommissioning; about the civil nuclear sector, including the Civil Nuclear Constabulary and pensions; and for connected purposes. [26th October 2023]

**B**E IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

## PART 1

### LICENSING OF CARBON DIOXIDE TRANSPORT AND STORAGE

#### CHAPTER 1

##### LICENSING OF ACTIVITIES

###### *General functions*

### **1 Principal objectives and general duties of Secretary of State and economic regulator**

- (1) The principal objectives of the Secretary of State and the GEMA in carrying out their respective functions under this Part are to—
  - (a) protect the interests of current and future transport and storage network users;
  - (b) protect the interests of any consumers whose interests the Secretary of State or the economic regulator (as the case may be) considers may be impacted by the exercise of their respective functions under this Part;
  - (c) promote the efficient and economic development and operation of transport and storage networks, having regard to the need for licence holders to be able to finance their licensable activities.
- (2) In this Part the GEMA is referred to as the “economic regulator”.
- (3) The Secretary of State and the economic regulator must carry out their respective functions under this Part in the manner which the Secretary of State or the economic regulator (as the case may be) considers is best calculated to further the principal objectives, wherever appropriate by—
  - (a) promoting effective competition between persons engaged in, or in commercial activities connected with, the activities mentioned in section 2(2);
  - (b) promoting the resilience of transport and storage networks;
  - (c) protecting the public from dangers arising from the construction, operation and decommissioning of infrastructure used for the purposes of activities mentioned in section 2(2).
- (4) In carrying out functions under this Part in accordance with the preceding provisions of this section, the Secretary of State or the economic regulator (as the case may be) must have regard to—
  - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to the Secretary of State or the economic regulator to represent the best regulatory practice;
  - (b) the need to contribute to the achievement of sustainable development.

- (5) In carrying out functions under this Part in accordance with the preceding provisions of this section the Secretary of State must have regard to the Secretary of State’s duties under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets).
- (6) In carrying out functions under this Part in accordance with the preceding provisions of this section, the economic regulator must have regard to –
  - (a) the need to assist the Secretary of State’s compliance with the duties mentioned in subsection (5);
  - (b) the targets specified in subsection (8).
- (7) In exercising their respective functions in relation to licensable activities, the Secretary of State and the economic regulator may have regard to the desirability of the efficient and effective operation of the energy system (or any part of it) in the United Kingdom or any part of the United Kingdom.
- (8) The targets referred to in subsection (6)(b) are –
  - (a) the net-zero emissions target, as defined in section A1(1) of the Climate Change (Scotland) Act 2009 (asp 12);
  - (b) the interim targets, as defined in section 2 of that Act;
  - (c) a target in, or set under, section 1 or 2 of the Climate Change Act (Northern Ireland) 2022;
  - (d) a target in, or set under, section 29 or 30 of the Environment (Wales) Act 2016 (anaw 3).
- (9) In this section –

“transport and storage network user” means a person who is, or seeks to be, a party to arrangements for carbon dioxide to be transported to a relevant site for the purpose of disposal by way of geological storage;

“transport and storage networks” means infrastructure and facilities for –

  - (a) the disposal of carbon dioxide by way of geological storage (or injection for the purposes of geological storage) at a relevant site, or
  - (b) the transportation of carbon dioxide to a relevant site for the purpose of such disposal;

“relevant site” means a site that is –

  - (a) in the United Kingdom, or
  - (b) in, under or over –
    - (i) the territorial sea adjacent to the United Kingdom, or
    - (ii) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (10) For the purposes of this Part activities are “licensable activities” if undertaking them without the authority of a licence or exemption constitutes an offence under section 2(1).

*Licensable activities*

## **2 Prohibition on unlicensed activities**

- (1) It is an offence for a person to carry on an activity within subsection (2) unless the person is authorised to do so by a licence.
- (2) The activities are—
  - (a) operating a site for the disposal of carbon dioxide by way of geological storage;
  - (b) providing a service of transporting carbon dioxide by a licensable means of transportation.
- (3) In this Part “licensable means of transportation” means—
  - (a) a pipe or system of pipes, or
  - (b) any other means of transportation that may be specified by regulations made by the Secretary of State,which falls within subsection (4).
- (4) A means of transportation falls within this subsection if it is used (with or without other means of transportation) for transporting carbon dioxide all or part of the way to a site for the geological storage of carbon dioxide.
- (5) A person who commits an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.
- (6) No proceedings may be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the economic regulator.
- (7) Regulations under subsection (3)(b) may make consequential, transitional, incidental or supplementary provision including—
  - (a) amendments (or repeals or revocations) in any provision of this Act or any other enactment, and
  - (b) provision modifying any standard conditions of licences or provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (8) But regulations made by virtue of subsection (7)(a) may not make provision amending (or repealing or revoking) any provision of—
  - (a) an Act of the Scottish Parliament, or an instrument made under such an Act, unless the Scottish Ministers have consented to the making of that provision;
  - (b) a Measure or Act of Senedd Cymru, or an instrument made under such a Measure or Act, unless the Welsh Ministers have consented to the making of that provision;



- (c) Northern Ireland legislation, or an instrument made under Northern Ireland legislation, unless the Department for the Economy in Northern Ireland has consented to the making of that provision.
- (9) Regulations under subsection (3)(b) are subject to the affirmative procedure.
- (10) For the purposes of this Part the person who “operates” a site for the geological storage of carbon dioxide is the person who carries on or (where different) controls activities at the site.

### **3 Consultation on proposals for additional activities to become licensable**

- (1) Before making regulations under section 2(3)(b), the Secretary of State must give notice—
  - (a) stating that the Secretary of State proposes to make regulations providing for the means of transportation in question to become a licensable means of transportation, and
  - (b) specifying a reasonable period (of not less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal,and must consider any representations or objections duly made and not withdrawn.
- (2) The notice must be given—
  - (a) by sending a copy of the notice to the economic regulator, the appropriate devolved authorities and any other body the Secretary of State considers appropriate, and
  - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such regulations.
- (3) For the purposes of this section the “appropriate devolved authorities” are—
  - (a) 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);
  - (b) 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;
  - (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.

#### **4 Territorial scope of prohibition**

Section 2(1) applies to activities in, above or below –

- (a) the territorial sea adjacent to the United Kingdom, or
- (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008),

as it applies to activities in the United Kingdom.

#### **5 Exemption from prohibition**

- (1) The Secretary of State may by regulations grant exemption from the prohibition under section 2(1).

- (2) An exemption may be granted –

- (a) to a specified person, or persons of a specified class;
- (b) generally or to such extent as may be specified;
- (c) unconditionally or subject to such conditions as may be specified.

- (3) Before making regulations under subsection (1) the Secretary of State must give notice –

- (a) stating that the Secretary of State proposes to make such regulations and setting out the terms of the proposed regulations,
- (b) stating the reasons why the Secretary of State proposes to make the regulations in the terms proposed, and
- (c) specifying the time (which must be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made,

and must consider any representations which are duly made in respect of the proposals and not withdrawn.

- (4) The notice required by subsection (3) must be given –

- (a) by serving a copy of it on the economic regulator and any appropriate devolved authority, and
- (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed regulations.

- (5) Notice of an exemption granted to a person is to be given –

- (a) by serving a copy of the exemption on the person, and
- (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.

- (6) Notice of an exemption granted to persons of a class must be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of –

- (a) persons of that class, and
- (b) other persons who may be affected by it.

- (7) An exemption may be granted –
  - (a) indefinitely, or
  - (b) for a period specified in, or determined by or under, the exemption.
- (8) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption –
  - (a) to comply with any direction given by a relevant authority as to such matters as are specified in the exemption or are of a description so specified,
  - (b) to do (or not do) such things as are specified in the exemption or are of a description so specified, except so far as the Secretary of State or a relevant authority consents to the person’s not doing (or doing) them, and
  - (c) to refer for determination by the Secretary of State or a relevant authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (9) For the purposes of this section the “appropriate devolved authorities” are –
  - (a) the Scottish Ministers, if the regulations under subsection (1) 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 those 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 those 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.
- (10) In subsection (8) “relevant authority” means a person specified in the conditions.

## **6 Revocation or withdrawal of exemption**

- (1) The Secretary of State may by regulations revoke regulations by which an exemption was granted to a person or vary regulations by which more than one exemption was so granted so as to terminate any of the exemptions –
  - (a) at the person’s request,
  - (b) in accordance with any provision of the regulations by which the exemption was granted, or

- (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (2) The Secretary of State may by regulations revoke regulations by which an exemption was granted to persons of a class or vary regulations by which more than one exemption was so granted so as to terminate any of the exemptions –
  - (a) in accordance with any provision of the regulations by which the exemption was granted, or
  - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by regulations withdraw an exemption granted to persons of a class from any person of that class –
  - (a) at the person’s request,
  - (b) in accordance with any provision of the regulations by which the exemption was granted, or
  - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person.
- (4) Before making regulations under subsection (1)(b) or (c), (2) or (3)(b) or (c), the Secretary of State must –
  - (a) give notice of the proposal to do so (with reasons) and of a period within which representations may be made to the Secretary of State, and
  - (b) consider any representations which are duly made and not withdrawn.
- (5) The notice under subsection (4) must be given –
  - (a) to the economic regulator and any appropriate devolved authority,
  - (b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), by serving a copy of it on the person to whom the exemption was granted,
  - (c) where the Secretary of State is proposing to make regulations under subsection (2), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted, and
  - (d) where the Secretary of State is proposing to make regulations under subsection (3)(b) or (c), by serving a copy of it on the person from whom the Secretary of State proposes to withdraw the exemption.
- (6) For the purposes of subsection (5) the “appropriate devolved authorities” are –
  - (a) the Scottish Ministers, if the regulations to which the notice relates 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 those 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 those 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.
- (7) Regulations under this section and section 5 are subject to the negative procedure.

#### *Grant and conditions of licences*

### **7 Power to grant licences**

- (1) The economic regulator may grant a licence authorising a person to carry on –
- (a) activities falling within section 2(2)(a);
  - (b) activities falling within section 2(2)(b).
- (2) A licence –
- (a) must be in writing;
  - (b) is to continue in force for such period as may be specified in or determined by or under the licence, unless previously revoked in accordance with any term of the licence.

### **8 Power to create licence types**

- (1) The Secretary of State may by regulations provide that different types of licence may be granted under section 7(1) in respect of different descriptions of activity falling within section 2(2).
- (2) Regulations under this section may make consequential, transitional, incidental or supplementary provision including –
- (a) amendments (or repeals or revocations) in any provision of this Act or any other enactment, and
  - (b) provision modifying any standard conditions of licences or provision determining the conditions which are to be standard conditions for the purposes of new types of licences.
- (3) Before making regulations under this section containing provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority –

- (a) stating that the Secretary of State proposes to make regulations under this section, and
  - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to the provision within the relevant devolved competence, and must consider any representations duly made and not withdrawn.
- (4) For the purposes of this section “relevant devolved authority” means—
- (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
  - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;
- and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.
- (5) For the purposes of this section, provision—
- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) is within Welsh devolved competence if it 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) is within Northern Ireland devolved competence if it—
    - (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 references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.
- (6) Regulations under this section are subject to the affirmative procedure.

## **9 Procedure for licence applications**

- (1) The Secretary of State, or the economic regulator with the approval of the Secretary of State, may by regulations—
- (a) make provision about the form and manner in which an application for a licence must be made;
  - (b) authorise the grantor to require that an application is accompanied by a fee for processing the application of an amount determined in accordance with the regulations.

- (2) The Secretary of State may by regulations make provision about the procedure for applications for a licence (in addition to any provision that may be made under subsection (1)) including, for example, provision –
  - (a) requiring that a decision to refuse a licence must be accompanied by reasons for the decision;
  - (b) imposing requirements with regard to the publication of decisions to refuse a licence.
- (3) Before making regulations under subsection (2) or (7) the Secretary of State must –
  - (a) consult the economic regulator and the appropriate devolved authorities, and
  - (b) specify a period of not less than 28 days within which representations or objections with respect to the proposed regulations may be made, and the Secretary of State must consider any representations or objections which are duly made and not withdrawn.
- (4) Before granting a licence the economic regulator must give notice –
  - (a) stating that the economic regulator proposes to grant the licence,
  - (b) stating the reasons why the economic regulator proposes to grant the licence, and
  - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made, and must consider any representations or objections which are duly made and not withdrawn.
- (5) A notice under subsection (4) must be given by –
  - (a) publishing the notice in such manner as the economic regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence, and
  - (b) sending a copy of the notice to –
    - (i) the Scottish Ministers, if an activity that would be authorised by the proposed licence is within Scottish devolved competence;
    - (ii) the Welsh Ministers, if an activity that would be authorised by the licence is within Welsh devolved competence;
    - (iii) the Department for the Economy in Northern Ireland, if an activity that would be authorised by the licence is within Northern Ireland devolved competence.
- (6) Section 17(4) (activities authorised by a licence: devolved competence) applies for the purposes of subsection (5)(b) of this section as it applies for the purposes of section 17.
- (7) The Secretary of State may by regulations make provision, in relation to licences, about the matters to be taken into account in determining whether an applicant for a licence should be granted the licence.
- (8) Regulations under this section are subject to the negative procedure.

- (9) Consultation before the passing of this Act is as effective for the purposes of subsections (3) and (4) as consultation after that time.
- (10) In this Part “grantor”, in relation to a licence or an application for a licence, means the person who grants or, as the case may be, has power to grant, the licence.
- (11) For the purposes of this section “appropriate devolved authority”, in relation to regulations, means—
- (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
  - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence.
- (12) For the purposes of this section, provision—
- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) is within Welsh devolved competence if it 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) is within Northern Ireland devolved competence if it—
    - (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.
- (13) The Statutory Instruments Act 1946 applies in relation to the power of the economic regulator to make regulations under subsection (1) as if the economic regulator were a Minister of the Crown.
- (14) Any sums received by the economic regulator or the Secretary of State by virtue of this section must be paid into the Consolidated Fund.

## **10 Competitive tenders for licences**

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom a licence is to be granted.
- (2) That provision may include—



- (a) provision, in prescribed cases, for the publication of a proposal to grant a licence;
  - (b) provision for the inclusion in such a proposal of an invitation to apply for a licence;
  - (c) provision restricting the making of applications for a licence and imposing requirements as to the period within which they must be made;
  - (d) provision for regulating the manner in which applications are considered and determined;
  - (e) provision authorising the Secretary of State to direct, in relation to a particular competition, that specified functions which would, apart from the direction, be exercisable by the economic regulator are, so far as they relate to that competition, to be exercised instead by a specified person.
- (3) Before making regulations under subsection (1) the Secretary of State must give notice to the economic regulator and the appropriate devolved authorities –
- (a) stating that the Secretary of State proposes to make regulations under this section, and
  - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations must be made with respect to the proposed provisions,
- and must consider any representations duly made and not withdrawn.
- (4) Regulations under subsection (1) –
- (a) may make provision by reference to a determination by the economic regulator or to the opinion of the economic regulator as to any matter;
  - (b) may dispense with or supplement provision made in relation to applications for licences under section 9.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.
- (6) For the purposes of subsection (3) the “appropriate devolved authorities” 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.

(7) In this section—

“competition” means a determination such as is mentioned in subsection (1);

“prescribed” means prescribed in, or determined under, regulations under subsection (1);

“specified”, in relation to a direction under subsection (2)(e), means specified in the direction.

## 11 Conditions of licences: general

(1) A licence may include—

(a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by section 1 (principal objectives of Secretary of State and economic regulator), and

(b) conditions requiring the making to the economic regulator of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence.

(2) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph may require the licence holder—

(a) to comply with any direction given by the economic regulator or the Secretary of State as to such matters as are specified in the licence or are of a description so specified,

(b) to consent to the disclosure of information provided in accordance with a direction given to the licence holder,

(c) except in so far as the economic regulator or Secretary of State consents to the licence holder’s doing (or not doing) them, not to do (or to do) such things as are specified in the licence or are of a description so specified,

(d) to refer for determination by the economic regulator or Secretary of State such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified, and

(e) to refer for approval by the economic regulator or the Secretary of State such things as are (or may be) required to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified.

- (3) Without prejudice to the generality of paragraph (a) of subsection (1), conditions in a licence may also include—
  - (a) provision about the revenue that the licence holder may receive in respect of its activities (the licence holder’s “allowed revenue”);
  - (b) provision about how the licence holder’s allowed revenue is to be calculated.
- (4) In subsection (3) the reference to revenue that the licence holder may receive in respect of its activities includes revenue that is calculated by reference to estimates of the licence holder’s decommissioning costs, as defined in section 92 (financing of costs of decommissioning etc).
- (5) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (6) may be included in a licence by virtue of that paragraph, in respect of circumstances where a person (“the licence holder”) holds such a licence, and another person (“the candidate”)—
  - (a) has applied or is considering whether to apply for a licence, or
  - (b) is considering whether to apply for financial support for carbon capture activities.
- (6) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the economic regulator or the Secretary of State requiring the licence holder to provide to the candidate—
  - (a) information in relation to the activities authorised by the licence, and
  - (b) any other assistance the candidate may reasonably require, for the purpose of determining whether to—
    - (i) apply for a licence, or
    - (ii) (as the case may be) apply for financial support for carbon capture activities.
- (7) Conditions included in a licence may contain provision for the conditions—
  - (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions, or
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.
- (8) Any provision included by virtue of subsection (7) in a licence is to have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence.
- (9) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.
- (10) Any sums received by the economic regulator in consequence of the provisions of any condition of a licence must be paid into the Consolidated Fund.

## **12 Standard conditions of licences**

- (1) The Secretary of State may determine the conditions that are to be the standard conditions of licences.
- (2) The Secretary of State must publish any standard conditions determined under subsection (1) in whatever manner the Secretary of State considers appropriate.
- (3) Subject to subsections (4) and (5), each condition which is a standard condition is to be incorporated by reference in each licence.
- (4) Subsection (3) does not apply to a licence granted before the publication of the standard condition.
- (5) Subject to the following provisions of this section, the grantor of a licence in which standard conditions would, but for this subsection, be incorporated in accordance with subsection (3) may exclude or modify any of those standard conditions, to such extent as the grantor may consider requisite to meet the circumstances of a particular case.
- (6) Before excluding any standard conditions or making any modifications under subsection (5), the grantor must give notice—
  - (a) stating that the grantor proposes to exclude the conditions or make the modifications and setting out the effect of so doing,
  - (b) stating the reasons why the grantor proposes to exclude the conditions or make the modifications, and
  - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made,and must consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (6) must be given—
  - (a) by publishing the notice in whatever manner the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications, and
  - (b) by sending a copy of the notice to the appropriate devolved authorities (if any) and the Secretary of State.
- (8) The grantor must not exclude any conditions, or make any modifications, under subsection (5) unless the grantor is of the opinion that the exclusions or modifications are such that—
  - (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences, and
  - (b) no other holder of a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence).

- (9) If, within the time specified in the notice under subsection (6), the Secretary of State (after consulting the appropriate devolved authorities (if any)) directs the grantor not to exclude or modify any standard condition, the grantor must comply with the direction.
- (10) The modification under subsection (5) of part of a standard condition does not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Part.
- (11) Where, in granting a licence, the grantor excludes or modifies any standard conditions under subsection (5), the grantor must publish a notice setting out—
  - (a) each exclusion or modification,
  - (b) their effects, and the reason for adopting them, and
  - (c) how the grantor has taken account of any representations or objections made in accordance with subsection (6).
- (12) For the purposes of this section the “appropriate devolved authorities” are—
  - (a) the Welsh Ministers, if provision making the exclusions and modifications proposed in the notice under subsection (6) 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);
  - (b) the Scottish Ministers, if provision making the exclusions and modifications proposed in that notice would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (c) the Department for the Economy in Northern Ireland, if provision making the exclusions and modifications proposed in that notice—
    - (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.

### **13 Modification of conditions of licences**

- (1) The economic regulator may make modifications of—
  - (a) the conditions of a particular licence;
  - (b) the standard conditions of licences.
- (2) Before making any modifications under this section, the economic regulator must give notice—
  - (a) stating that it proposes to make modifications,
  - (b) setting out the proposed modifications and their effect,

- (c) stating the reasons why it proposes to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.
- (3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.
- (4) A notice under subsection (2) must be given –
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and
  - (b) by sending a copy of the notice to –
    - (i) each relevant licence holder,
    - (ii) the Secretary of State, and
    - (iii) the appropriate devolved authorities (if any).
- (5) The economic regulator must consider any representations which are duly made.
- (6) If, within the time specified by virtue of subsection (2)(d), the Secretary of State directs the economic regulator not to make any modification, the economic regulator must comply with the direction.
- (7) Subsections (8) to (10) apply where, having complied with subsections (2) to (5), the economic regulator decides to proceed with the making of modifications of the conditions of any licence under this section.
- (8) The economic regulator must –
  - (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).
- (9) Each modification has effect from the date specified by the economic regulator in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2).
- (10) The date specified by virtue of subsection (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section.
- (11) In this section “relevant licence holder” –
  - (a) in relation to the modification of standard conditions, means the holder of a licence –
    - (i) which is to be modified by the inclusion of any new standard condition, or

- (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d), or
  - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence.
- (12) For the purposes of this section the “appropriate devolved authorities” are—
  - (a) the Welsh Ministers, if provision making the modifications proposed in the notice under subsection (2) 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);
  - (b) the Scottish Ministers, if provision making the modifications proposed in that notice would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (c) the Department for the Economy in Northern Ireland, if provision making the modifications proposed in that notice—
    - (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.

#### **14 Modification of conditions under section 13: supplementary**

- (1) Subsections (2) and (3) apply where at any time the economic regulator modifies the conditions of licences under section 13.
- (2) If the conditions modified are standard conditions, the economic regulator must—
  - (a) also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The economic regulator may make such incidental or consequential modifications of any conditions of licences as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under section 13 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.

- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 2 in relation to the decision to which the modification relates.

## **15 Modification by order under other enactments**

- (1) Where the CMA or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of—
- (a) the conditions of a particular licence, or
  - (b) the standard conditions of licences,
- to such extent as may appear to the relevant authority to be necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order.
- (2) In subsection (1) “relevant order” means—
- (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
    - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence, or
    - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence, or
  - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market or markets in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a licence.
- (3) The modification under subsection (1)(a) of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (4) Where at any time the relevant authority modifies under subsection (1)(b) the standard conditions of licences, the relevant authority—
- (a) must also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and
  - (b) may, after consultation with the economic regulator, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences under that provision granted before that time.
- (5) Where at any time the relevant authority modifies standard conditions under subsection (4)(a) for the purposes of their incorporation in licences granted after that time, the relevant authority must publish those modifications in such manner as the relevant authority considers appropriate.



- (6) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.

*Interim power of Secretary of State to grant licences*

**16 Interim power of Secretary of State to grant licences**

Schedule 1 makes provision about the power of the Secretary of State to grant licences during an interim period.

*Termination of licence*

**17 Termination of licence**

- (1) If the economic regulator considers that a termination event has arisen, or is likely to arise, the economic regulator must notify the persons mentioned in subsection (2) as soon as reasonably practicable.
- (2) Those persons are –
- (a) the Secretary of State;
  - (b) the Scottish Ministers, if an activity authorised by the licence is within Scottish devolved competence;
  - (c) the Welsh Ministers, if an activity authorised by the licence is within Welsh devolved competence;
  - (d) the Department for the Economy in Northern Ireland, if an activity authorised by the licence is within Northern Ireland devolved competence;
  - (e) the Oil and Gas Authority;
  - (f) any affected persons not falling within paragraphs (a) to (e) that the economic regulator considers appropriate.
- (3) A notice under subsection (1) must specify –
- (a) in a case where a termination event has arisen, the date on which the economic regulator proposes to revoke the licence, and
  - (b) in any case, the date by which any representations must be made.
- (4) For the purposes of this section an activity authorised by a licence –
- (a) is within Scottish devolved competence if provision about that activity would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) is within Welsh devolved competence if provision about that activity 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) is within Northern Ireland devolved competence if provision about that activity –

- (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.
- (5) In this section—
- “affected person” means a person that the economic regulator considers may be affected by the decision as to whether the licence should be terminated;
  - “termination event” means a state of affairs in which the economic regulator is authorised to revoke the licence.

*Transfer of licences*

## **18 Transfer of licences**

- (1) A licence—
- (a) is to be capable of being transferred by the licence holder, with the consent of the economic regulator, in accordance with this section and subject to any term of the licence relating to its transfer;
  - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which the licence holder is authorised to carry on).
- (4) Such consent may be given subject to compliance with such modification conditions or other conditions as the economic regulator considers necessary or expedient.
- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make, as respects so much of the licence as is proposed to be retained by the transferor, provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) Conditions imposed under subsection (4) may in particular require—
- (a) the transfer of rights, liabilities or property to the transferee;
  - (b) the creation of rights in relation to property, rights or liabilities in favour of the transferee;
  - (c) the creation of other rights and liabilities as between the transferor and transferee.
- (7) A purported transfer of a licence is to be void—

- (a) if the licence is not capable of transfer or the economic regulator has not given its consent under section 19,
  - (b) if the purported transfer is in breach of a condition of the licence, or
  - (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the economic regulator’s consent is given.
- (8) In this section –
- “modification condition” means a condition requiring, or otherwise providing for the making of, modifications to the conditions of a licence;
  - “transfer” includes any form of transfer or assignment or, in Scotland, assignation.

## 19 Consenting to transfer

- (1) Before giving consent to the transfer of a licence under section 18(1), the economic regulator must –
- (a) publish a notice stating that it proposes to grant consent to the transfer,
  - (b) send a copy of the notice to –
    - (i) the Scottish Ministers, if an activity authorised by the licence is within Scottish devolved competence,
    - (ii) the Welsh Ministers, if an activity authorised by the licence is within Welsh devolved competence,
    - (iii) the Department for the Economy in Northern Ireland, if an activity authorised by the licence is within Northern Ireland devolved competence,
    - (iv) the Oil and Gas Authority, and
    - (v) such other persons as the economic regulator considers are likely to be affected by the decision, and
  - (c) consider any representations or objections that are duly made and not withdrawn.
- (2) Section 17(4) (activities authorised by a licence: devolved competence) applies for the purposes of subsection (1)(b) of this section as it applies for the purposes of section 17.
- (3) A notice under subsection (1) must –
- (a) state the reasons why the economic regulator proposes to give consent;
  - (b) specify any conditions the economic regulator proposes to impose under section 18(4);
  - (c) specify the time from the date of publication of the notice (which must not be less than two months) within which representations or objections with respect to the proposed transfer may be made,
- and must be published in such manner as the economic regulator considers appropriate for bringing it to the attention of persons likely to be affected by the transfer.

- (4) Subject to subsection (6), the economic regulator must, following consideration of any representations or objections under subsection (3), give the Secretary of State not less than 28 days' notice of—
  - (a) any proposal to give consent to the transfer, and
  - (b) any conditions the economic regulator proposes to impose under section 18(4).
- (5) If, before the expiry of the time specified in a notice under subsection (4), the Secretary of State gives the economic regulator a direction not to consent to the transfer, the economic regulator must comply with that direction.
- (6) Where the Secretary of State gives no direction under subsection (5), the economic regulator may give consent to the transfer of the licence after—
  - (a) the expiry of the time specified in the notice under subsection (4), or
  - (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the economic regulator that in relation to the notice no direction will be given under subsection (5).

*Appeal from decisions of the economic regulator*

## **20 Appeal to the CMA**

- (1) An appeal may be made to the CMA against a decision by the economic regulator to proceed with the modification of a condition of a licence under section 13.
- (2) An appeal may be brought under this section only by—
  - (a) a relevant licence holder (within the meaning of section 13);
  - (b) a transport and storage network user whose interests are materially affected by the decision;
  - (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b);
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds—
  - (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;
  - (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
  - (c) in relation to any appeal—
    - (i) that the appeal is brought for reasons that are trivial or vexatious;
    - (ii) that the appeal has no reasonable prospect of success.

- (5) References in this section to a “qualifying body or association” are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question.
- (6) In this section “transport and storage network user” has the same meaning as in section 1.

## **21 Procedure on appeal to CMA**

- (1) Schedule 2 has effect.
- (2) Except where specified otherwise in Schedule 2, the functions of the CMA with respect to an appeal under section 20 are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

## **22 Determination by CMA of appeal**

- (1) This section applies to every appeal brought under section 20.
- (2) In determining an appeal the CMA must have regard, to the same extent as is required of the economic regulator, to the matters to which the economic regulator must have regard—
  - (a) in the carrying out of its principal objectives under section 1, and
  - (b) in the performance of its duties under that section.
- (3) In determining the appeal the CMA—
  - (a) may have regard to any matter to which the economic regulator was not able to have regard in relation to the decision which is the subject of the appeal, but
  - (b) must not, in the exercise of that power, have regard to any matter to which the economic regulator would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
  - (a) that the economic regulator failed properly to have regard to any matter mentioned in subsection (2);
  - (b) that the economic regulator failed to give the appropriate weight to any matter mentioned in subsection (2);
  - (c) that the decision was based, wholly or partly, on an error of fact;
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the economic regulator by virtue of section 13(8)(b);
  - (e) that the decision was wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

### **23 CMA’s powers on allowing appeal**

- (1) This section applies where the CMA allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the CMA must do one or more of the following—
  - (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the economic regulator for reconsideration and determination in accordance with any directions given by the CMA;
  - (c) substitute the CMA’s decision for that of the economic regulator (to the extent that the appeal is allowed) and give any directions to the economic regulator or any other party to the appeal.
- (3) If the appeal is in relation to any other decision, the CMA must do one or both of the following—
  - (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the economic regulator for reconsideration and determination in accordance with any directions given by the CMA.
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction).
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the economic regulator is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session.
- (7) For the purposes of this section a decision is a “price control decision”, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA’s opinion, to limit or control the charges on, or the revenue of, the holder of the licence.
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is, the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and section 24 any reference to a party to an appeal is to be read in accordance with Schedule 2.

### **24 Time limits for CMA to determine an appeal**

- (1) The CMA must—
  - (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date.

- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
  - (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).
- (4) Where subsection (3) applies, the CMA must—
  - (a) determine an appeal against a price control decision within the period specified by it, which must not be longer than the period of 7 months beginning with the permission date;
  - (b) determine an appeal against any other decision within the period specified by it, which must not be longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination.
- (6) In this section “price control decision” is to be read in accordance with section 23.
- (7) References in this section to the “permission date” are to the date on which the CMA gave permission to bring the appeal in accordance with section 20(3).

## **25 Determination of appeal by CMA: supplementary**

- (1) A determination by the CMA on an appeal—
  - (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time—
    - (i) specified in the order, or
    - (ii) determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;
    - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal).
- (2) The CMA may exclude from publication under subsection (1)(e) any information which it is satisfied is—

- (a) commercial information, the disclosure of which would, or might in the CMA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or
  - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA’s opinion, significantly harm the individual’s interests.
- (3) The economic regulator must take such steps as it considers necessary for it to comply with an order of the CMA made by virtue of subsection (1)(a).
- (4) The steps must be taken –
- (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
  - (b) in any other case, within a reasonable time.
- (5) Subsections (2) to (4) of section 14 (consequences of modification of standard conditions) apply where a condition of a licence is modified in accordance with section 23 as they apply where a condition of a licence is modified under section 13.

### *Information*

## **26 Provision of information to or by the economic regulator**

- (1) The economic regulator may provide to a person within subsection (2) such information as the economic regulator considers necessary in connection with the exercise by the economic regulator of its functions relating to the regulation of licensable activities.
- (2) The persons within this subsection are –
- (a) the Oil and Gas Authority;
  - (b) the Environment Agency;
  - (c) the Scottish Environment Protection Agency;
  - (d) Natural Resources Wales;
  - (e) the Health and Safety Executive;
  - (f) the Health and Safety Executive for Northern Ireland;
  - (g) the CMA;
  - (h) the Scottish Ministers;
  - (i) the Welsh Ministers;
  - (j) the Department for the Economy in Northern Ireland;
  - (k) the Northern Ireland Environment Agency;
  - (l) the Secretary of State;
  - (m) any other person the economic regulator considers appropriate who has powers or duties conferred by or by virtue of primary legislation which the economic regulator considers relevant to the exercise of the economic regulator’s functions relating to the regulation of licensable activities.



- (3) The economic regulator may by notice request from a person within subsection (2) such information as the economic regulator considers necessary in connection with the exercise by the economic regulator of its functions relating to the regulation of licensable activities.
- (4) A person to whom a request is made under subsection (3) must, so far as reasonably practicable, provide the requested information within such period, and in such form and manner, as may be specified in the notice.
- (5) Except as provided by subsection (6), the disclosure of information under this section does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (6) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by subsection (1) or, as the case may be, the duty under subsection (4) is to be taken into account).
- (7) In this section “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.

## **27 Power of Secretary of State to require information**

- (1) The Secretary of State may by notice in writing require a licence holder to provide the Secretary of State with information which is reasonably required by the Secretary of State for the purposes of the Secretary of State’s functions under this Part.
- (2) A notice under subsection (1) must specify—
  - (a) the form and manner in which information is to be provided, and
  - (b) the time within which it is to be provided.
- (3) A licence holder may not be required under this section to provide any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications.
- (4) Except as provided by subsection (5), the disclosure of information under this section does not breach—
  - (a) any obligation of confidence owed by the licence holder making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).

- (5) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, a requirement imposed under subsection (1) is to be taken into account).

*Other functions of the economic regulator*

## **28 Monitoring, information gathering etc**

- (1) The economic regulator must keep under review the carrying on in the United Kingdom and elsewhere of the following activities –
- (a) operating a site for the disposal of carbon dioxide by way of geological storage;
  - (b) providing a service of transporting carbon dioxide by a licensable means of transportation;
  - (c) activities ancillary to activities mentioned in paragraph (a) or (b).
- (2) The economic regulator may, for the purpose of facilitating the performance of its functions under this Part, collect information with respect to such activities.
- (3) The economic regulator must give the Secretary of State or the CMA any information they may request with respect to any matter relating to the economic regulator’s functions under this Part.

## **29 Power to require information for purposes of monitoring**

- (1) The economic regulator may, for the purpose of exercising its functions under subsections (1) and (2) of section 28, serve a notice under subsection (2) on any licence holder.
- (2) A notice under this subsection is a notice which –
- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the economic regulator any documents which are specified or described in the notice and are in that person’s custody or under their control, or
  - (b) requires that person, if they are carrying on a business, to provide to the economic regulator in the form and manner, and within the period, specified in the notice, the information specified or described in the notice.
- (3) In paragraphs (a) and (b) of subsection (2) the reference to the economic regulator includes a person appointed by the economic regulator for the purpose of exercising the function in question.
- (4) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is guilty of an offence liable –
- (a) on summary conviction in England and Wales, to a fine;

- (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.
- (5) Except as provided by subsection (6), the disclosure of information under this section does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (6) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, a requirement imposed by virtue of subsection (2) is to be taken into account).

### **30 Duty to carry out impact assessment**

- (1) This section applies where—
  - (a) the economic regulator is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of this Part, and
  - (b) it appears to the economic regulator that the proposal is important;but this section does not apply if it appears to the economic regulator that the urgency of the matter makes it impracticable or inappropriate for the economic regulator to comply with the requirements of this section.
- (2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following—
  - (a) involve a major change in the activities carried on by the economic regulator;
  - (b) have a significant impact on persons engaged in the capture, transportation or storage of carbon dioxide;
  - (c) have a significant impact on persons engaged in commercial activities connected with the capture, transportation or storage of carbon dioxide;
  - (d) have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom;
  - (e) have significant effects on the environment.
- (3) Before implementing its proposal, the economic regulator must either—
  - (a) carry out and publish an assessment of the likely impact of implementing the proposal, or
  - (b) publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment.
- (4) An assessment carried out under this section must—
  - (a) include an assessment of the likely effects on the environment of implementing the proposal, and

- (b) relate to such other matters as the economic regulator considers appropriate.
- (5) In determining the matters to which an assessment under this section should relate, the economic regulator must have regard to such general guidance relating to the carrying out of impact assessments as it considers appropriate.
- (6) An assessment carried out under this section may take such form as the economic regulator considers appropriate.
- (7) Where the economic regulator publishes an assessment under this section –
  - (a) it must provide an opportunity of making representations to the economic regulator about its proposal to members of the public and other persons who, in the economic regulator’s opinion, are likely to be affected to a significant extent by the proposal’s implementation,
  - (b) the published assessment must be accompanied by a statement setting out how representations may be made, and
  - (c) the economic regulator must not implement its proposal unless the period for making representations about the proposal has expired and it has considered all the representations that were made in that period.
- (8) Where the economic regulator is required (apart from this section) –
  - (a) to consult about a proposal to which this section applies, or
  - (b) to give a person an opportunity of making representations about it,the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.
- (9) Every report under section 41 (annual reports on transport and storage licensing functions) must set out –
  - (a) a list of the assessments under this section carried out during the financial year to which the report relates, and
  - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.
- (10) The publication of anything under this section must be in such manner as the economic regulator considers appropriate for bringing it to the attention of the persons who, in the economic regulator’s opinion, are likely to be affected if its proposal is implemented.

### **31 Reasons for decisions**

- (1) This section applies to the following decisions of the economic regulator or the Secretary of State –
  - (a) the revocation of a licence;
  - (b) the modification of the conditions of a licence;
  - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 11(2)(a) or (c);

- (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 11(2)(d);
  - (e) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed.
- (2) As soon as reasonably practicable after making such a decision the economic regulator or the Secretary of State (“the decision maker”) must –
- (a) publish a notice stating the reasons for the decision in such manner as the decision maker considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested, and
  - (b) send a copy of the notice to the licence holder to whose licence, or to whom, the decision relates.
- (3) In preparing a notice under subsection (2) the decision maker must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where the decision maker considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body.
- (4) In this Part “final order” and “provisional order” have the same meaning as in Schedule 3 (see paragraph 1(12) of that Schedule).

#### *Enforcement*

### **32 Enforcement of obligations of licence holders**

Schedule 3 makes provision for the enforcement of conditions of licences and of other requirements imposed on licence holders by or under this Part.

#### *False statements*

### **33 Making of false statements etc**

- (1) A person who, in giving any information or making any application for the purposes of any provision of this Part, or of any regulation made under any provision of this Part, makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and liable –
- (a) on summary conviction in England and Wales, to a fine;
  - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
  - (c) on conviction on indictment, to a fine.
- (2) Proceedings for an offence under subsection (1) must not in England and Wales be instituted except by or with the consent of the Secretary of State or the Director of Public Prosecutions.

- (3) Proceedings for an offence under subsection (1) must not in Northern Ireland be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

*Criminal liability and procedure*

**34 Liability of officers of entities**

- (1) Where an offence under this Part committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to neglect on the part of an officer of the body corporate,
- that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means –
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person purporting to act in any such capacity.
- (3) In subsection (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly.

**35 Criminal proceedings**

- (1) Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) does not apply to any proceedings for an offence under this Part.
- (3) Proceedings for an offence under this Part alleged to have been committed in an offshore place may not be instituted in England and Wales except –
- (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for an offence under this Part alleged to have been committed in an offshore place may not be instituted in Northern Ireland except –

- (a) by the Secretary of State or a person authorised by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In this section “offshore place” means a place in, under or over –
- (a) the territorial sea adjacent to the United Kingdom, or
  - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

## CHAPTER 2

### FUNCTIONS WITH RESPECT TO COMPETITION

#### **36 Functions under the Enterprise Act 2002**

- (1) The functions to which subsection (2) applies are to be concurrent functions of the economic regulator and the CMA.
- (2) This subsection applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (other than sections 166, 171 and 174E) so far as those functions are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013) and relate to commercial activities connected with relevant storage and transport activities.
- (3) So far as necessary for the purposes of, or in connection with, subsections (1) and (2) –
  - (a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be construed as including references to the economic regulator (except in sections 166, 171 and 174E of that Act and in any other provision of that Act where the context otherwise requires);
  - (b) references in that Part to section 5 of that Act are to be construed as including references to section 28(1) and (2) of this Act.
- (4) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the economic regulator by virtue of subsections (1) and (2) –
  - (a) as if for subsection (1) of that section there were substituted –
    - “(1) Where the Gas and Electricity Markets Authority –
      - (a) is proposing to carry out its functions under section 28(1) or (2) of the Energy Act 2023 in relation to a matter for the purposes mentioned in subsection (2), and
      - (b) considers that the matter is one in respect of which it would be appropriate for the Gas and Electricity Markets Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Gas and Electricity Markets Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and

- (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with activities to which section 36(2) of the Energy Act 2023 applies”.
- (5) It is to be the duty of the economic regulator, for the purpose of assisting a CMA group in carrying out an investigation on a market investigation reference made by the economic regulator (under section 131 of the Enterprise Act 2002) by virtue of subsection (1), to give to the group—
- (a) any information which is in the economic regulator’s possession and which relates to matters falling within the scope of the investigation and—
    - (i) is requested by the group for that purpose, or
    - (ii) is information which, in the economic regulator’s opinion, it would be appropriate for that purpose to give to the group without any such request, and
  - (b) any other assistance which the group may require and which it is within the economic regulator’s power to give, in relation to any such matters,
- and the group must, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- (6) In subsection (5) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

### **37 Functions under the Competition Act 1998**

- (1) The economic regulator is to be entitled to exercise, concurrently with the CMA, the functions of the CMA under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51), so far as relating to—
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
  - (b) conduct of the kind mentioned in section 18(1) of that Act, or
- which relate to the carrying on of relevant transport and storage activities.
- (2) So far as necessary for the purposes of, or in connection with, the provisions of subsection (1), references in Part 1 of the Competition Act 1998 to the CMA are to be read as including a reference to the economic regulator (except in sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires).



### **38 Sections 36 and 37: supplementary**

- (1) Before the CMA or the economic regulator first exercises in relation to any matter functions which are exercisable concurrently by virtue of section 36(1) or 37(1), it must consult the other.
- (2) Neither the CMA nor the economic regulator is to exercise in relation to any matter functions which are exercisable concurrently by virtue of section 36(1) or 37(1) if functions which are so exercisable have been exercised in relation to that matter by the other.
- (3) If any question arises as to whether section 36(1) or 37(1) applies to any particular case, that question is to be referred to and determined by the Secretary of State, and no objection may be taken to anything done under—
  - (a) Part 4 of the Enterprise Act 2002, or
  - (b) Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51),by or in relation to the economic regulator on the ground that it should have been done by or in relation to the CMA.
- (4) In sections 36 and 37 “relevant storage and transport activities” means—
  - (a) activities such as are mentioned in section 2(2), and
  - (b) activities ancillary to such activities.

## **CHAPTER 3**

### **REPORTING REQUIREMENTS**

### **39 Forward work programmes**

- (1) The economic regulator must, before each financial year, publish a document (the “transport and storage forward work programme”) containing a general description of the relevant projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.
- (2) That description must include the objectives of each relevant project.
- (3) The forward work programme for any year must also include an estimate of the overall expenditure which the economic regulator expects to incur during the year in the exercise of its relevant functions.
- (4) Before publishing the forward work programme for any year, the economic regulator must give notice—
  - (a) containing a draft of the transport and storage forward work programme, and
  - (b) specifying the time within which representations or objections to the proposals contained in it may be made,and must consider any representations or objections which are duly made and not withdrawn.

- (5) The notice under subsection (4) must be published by the economic regulator in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.
- (6) The economic regulator must send a copy of any notice given by it under subsection (4) to—
  - (a) the Welsh Ministers,
  - (b) the Scottish Ministers, and
  - (c) the Department for the Economy in Northern Ireland.
- (7) In this section—

“relevant functions” means functions of the economic regulator under this Part;

“relevant project” means a project relating to the economic regulator’s functions under this Part.

#### **40 Information in relation to CCUS strategy and policy statement**

- (1) As soon as reasonably practicable after the designation of a statement as the CCUS strategy and policy statement for the purposes of this Part, the economic regulator must publish a document setting out the required information in relation to the statement.
- (2) The economic regulator must include the required information in relation to a CCUS strategy and policy statement in the transport and storage forward work programme for each financial year, subject to making such modifications to the information as the economic regulator considers appropriate from the version as last published under this subsection.
- (3) The required information in relation to a CCUS strategy and policy statement to be set out in a document or forward work programme is—
  - (a) the strategy the economic regulator intends to adopt for the purpose of furthering the delivery of the policy outcomes contained in the statement (both in respect of the year in or for which the document or programme is issued and beyond);
  - (b) the things the economic regulator proposes to do in implementing that strategy (including when the economic regulator proposes to do them);
  - (c) the ways in which the economic regulator has had regard to the strategic priorities contained in the statement in setting out the information required under paragraphs (a) and (b).
- (4) The duty under subsection (1) does not apply if—
  - (a) the economic regulator does not think it reasonably practicable to publish the document mentioned in that subsection before the time when the economic regulator is next required to publish a transport and storage forward work programme, and

- (b) the economic regulator includes the required information in that forward work programme.
- (5) The duty under subsection (2) does not apply in relation to the first financial year beginning after the designation of the statement if –
  - (a) the economic regulator does not think it reasonably practicable to include the required information in the transport and storage forward work programme for that year, and
  - (b) the economic regulator includes the required information in a document published under subsection (1).
- (6) The duty under subsection (2) does not apply in relation to a financial year if the Secretary of State gives notice to the economic regulator under this subsection that the statement’s designation –
  - (a) will be withdrawn before the beginning of the year, or
  - (b) is expected to have been withdrawn before the beginning of the year.
- (7) Subsections (4) and (5) of section 39 (notice requirements) apply to a document published under subsection (1) as they apply to a transport and storage forward work programme.
- (8) In this section –
  - “CCUS strategy and policy statement”, “policy outcomes” and “strategic priorities” have the same meaning as in Chapter 3 of Part 2 (see section 99);
  - “designation”, in relation to a CCUS strategy and policy statement, means designation of the statement by the Secretary of State under section 99;
  - “transport and storage forward work programme” has the meaning given by section 39.

#### **41 Annual report on transport and storage licensing functions**

- (1) The economic regulator must, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the “annual T&S report” for that year) on –
  - (a) the exercise of its functions under this Part during that year including a general survey of developments in respect of matters falling within the scope of those functions, and
  - (b) the activities of the CMA during that year in respect of any references made by the economic regulator by virtue of section 36(1).
- (2) The annual T&S report for each year must include –
  - (a) a report on the progress of the projects described in the transport and storage forward work programme for that year;
  - (b) a summary of final and provisional orders made and penalties imposed by the economic regulator during the year;
  - (c) a report on such other matters as the Secretary of State may from time to time require.

- (3) The annual T&S report for each year must also include a report on—
  - (a) the ways in which the economic regulator has carried out its duties under section 100(1) in relation to the CCUS strategy and policy statement (so far as the statement’s designation was in effect during the whole or any part of the year), and
  - (b) the extent to which the economic regulator has done the things set out under section 40 in a transport and storage forward work programme or other document as the things the economic regulator proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the statement (see subsection (3)(b) of that section).
- (4) The report mentioned in subsection (3) must, in particular, include—
  - (a) the economic regulator’s assessment of how the carrying out of its functions under this Part during the year has contributed to the delivery of the policy outcomes contained in the CCUS strategy and policy statement, and
  - (b) if the economic regulator has failed to do any of the things mentioned in subsection (3)(b), an explanation for the failure and the actions the economic regulator proposes to take to remedy it.
- (5) In subsections (3) and (4)—

“CCUS strategy and policy statement” and “policy outcomes” have the same meaning as in Chapter 3 of Part 2 (see section 99);

“transport and storage forward work programme” has the meaning given by section 39(1).
- (6) The Secretary of State must consult the economic regulator before exercising the power under subsection (2)(c) in relation to any matter.
- (7) The Secretary of State must—
  - (a) lay a copy of each annual T&S report before each House of Parliament,
  - (b) send a copy of the report to the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland, and
  - (c) arrange for the report to be published in such manner as the Secretary of State considers appropriate.
- (8) The Scottish Ministers must lay a copy of each annual T&S report before the Scottish Parliament.
- (9) The Welsh Ministers must lay a copy of each annual T&S report before Senedd Cymru.
- (10) The Department for the Economy in Northern Ireland must lay a copy of each annual T&S report before the Northern Ireland Assembly.
- (11) In making or preparing any report under this section the economic regulator must have regard to the need for excluding, so far as practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might,

in the opinion of the economic regulator, seriously and prejudicially affect the interests of that individual or body.

## CHAPTER 4

### SPECIAL ADMINISTRATION REGIME

#### *Transport and storage administration orders*

#### **42 Transport and storage administration orders**

- (1) A transport and storage administration order means an order which—
  - (a) is made by the court in relation to a company which holds a licence under section 7, and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) In this Chapter—
  - (a) a transport and storage administration order is referred to as a T&S administration order,
  - (b) a company which holds a licence under section 7 is referred to as a T&S company, and
  - (c) the person appointed in relation to a T&S company for the purposes of a T&S administration order is referred to as the T&S administrator of the company.
- (3) The T&S administrator of a company must manage the company’s affairs, business and property, and exercise and perform all the powers and duties of a T&S administrator, so as to achieve the objective set out in section 43.
- (4) In relation to a T&S administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only—
  - (a) to its affairs and business so far as carried on in Great Britain or a relevant controlled place, and
  - (b) to its property in Great Britain or a relevant controlled place.
- (5) In this section, “relevant controlled place” means a controlled place within the meaning of section 17(3) to (4) of the Energy Act 2008 other than a place—
  - (a) in Great Britain,
  - (b) in Northern Ireland, or
  - (c) in, under or over so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

#### **43 Objective of a transport and storage administration**

- (1) The objective of a transport and storage administration is to secure—

- (a) that the activities authorised by the licence of the T&S company to which the administration relates commence, or continue, in a manner which –
    - (i) is efficient and economical, and
    - (ii) ensures the safety and security of the transport and storage network, or the part of that network, to which the licence relates, and
  - (b) that it becomes unnecessary, by one or both of the following means, for the T&S administration order to remain in force for that purpose.
- (2) Those means are –
- (a) the rescue as a going concern of the company subject to the T&S administration order, and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern –
- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the T&S administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the transport and storage administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular –
- (a) a transfer of the undertaking of the company subject to the T&S administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company, and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a transport and storage administration may be achieved by a transfer falling within subsection (3) to the extent only that –
- (a) the rescue as a going concern of the company subject to the T&S administration order is not reasonably practicable or is not reasonably practicable without such a transfer,
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such a transfer,
  - (c) such a transfer would produce a result for the company’s creditors as a whole that is better than the result that would be produced without it, or
  - (d) such a transfer would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without it.
- (6) In subsection (1)(a) –
- (a) the reference to the activities authorised by the licence of the T&S company to which the administration relates includes a reference to

- any construction work or other activities needing to be carried out to commence those activities, and
- (b) the reference to the safety and security of the transport and storage network, or the part of that network, to which the licence relates includes a reference to the safety and security of any infrastructure and facilities being constructed for that network, or that part of that network.

*Application and amendment of the Energy Act 2004*

**44 Application of certain provisions of the Energy Act 2004**

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to a T&S administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).
- (2) In the application of those provisions generally –
- (a) for “energy administration”, in each place where it occurs, substitute “transport and storage administration”;
  - (b) for “energy administrator”, in each place where it occurs, substitute “T&S administrator”;
  - (c) for “Great Britain”, in each place it occurs (other than paragraphs 4(2)(e) and 11(4) and (7) of Schedule 21), substitute “Great Britain or a relevant controlled place”;
  - (d) for “a protected energy company”, in each place where it occurs, substitute “a T&S company”.
- (3) In the application of Schedule 20 –
- (a) in paragraph 32(1)(d), for the words from ““energy administration application”” to “Energy Act 2004” substitute ““transport and storage administration application” means an application to the court for a transport and storage administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 44 of the Energy Act 2023”;
  - (b) in paragraph 32(1)(e), for “section 155 of the Energy Act 2004” substitute “section 43 of the Energy Act 2023”;
  - (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 42(4) of the Energy Act 2023”;
  - (d) in paragraph 43, after “the Energy Act 2004” insert “and section 44 of the Energy Act 2023”;
  - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 44 of the Energy Act 2023”;
  - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 44 of the Energy Act 2023”;
  - (g) omit paragraph 46 (but see section 48 of this Act);

(h) in paragraph 47, after “Part 1 of this Schedule” insert “and section 44 of the Energy Act 2023”.

(4) In the application of Schedule 21 –

(a) for “an energy transfer scheme”, in each place where it occurs, substitute “a T&S transfer scheme”;

(b) for “old energy company”, in each place where it occurs, substitute “old T&S company”;

(c) for “new energy company”, in each place where it occurs, substitute “new T&S company”;

(d) in paragraph 1(b), for “section 155(3)” substitute “section 43(3) of the Energy Act 2023”;

(e) in paragraph 3(1), for “an “energy transfer scheme”” substitute “a “T&S transfer scheme””;

(f) in paragraphs 3(8) and 9(6), for “GEMA” substitute “–

(a) GEMA,

(b) the Health and Safety Executive,

(c) the Oil and Gas Authority,

(d) the appropriate devolved authorities (if any), and

(e) such other persons as the Secretary of State considers appropriate.”;

(g) in paragraph 5, after sub-paragraph (4) insert –

“(5) This paragraph also applies in relation to any licence or permit that the relevant licence mentioned in sub-paragraph (1) requires its holder to hold as it applies in relation to the relevant licence.”;

(h) in paragraphs 6(3) and 11(2), for “the energy transfer scheme” substitute “the T&S transfer scheme”;

(i) in paragraph 12, for “section 155” substitute “section 43 of the Energy Act 2023”;

(j) after paragraph 13 insert –

“14 For the purposes of paragraphs 3(8)(e) and 9(6)(e) the “appropriate devolved authorities” are –

(a) the Welsh Ministers, if provision making the scheme or (as the case may be) modification 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);

(b) the Scottish Ministers, if provision making the scheme or (as the case may be) modification would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.”



- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)–
- (a) insert, at the appropriate places, the following definitions–
- ““objective of the transport and storage administration” is to be construed in accordance with section 43 of the Energy Act 2023;”;
- ““relevant controlled place” has the meaning given by section 42(5) of the Energy Act 2023;”;
- ““T&S company” has the meaning given by section 42(2) of the Energy Act 2023;”;
- ““transport and storage administration order” has the meaning given by section 42(1) of the Energy Act 2023;”;
- ““transport and storage administration rules” means the rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 44 of the Energy Act 2023;”;
- (b) for the definition of “energy administrator” substitute–
- ““T&S administrator” has the meaning given by section 49 of the Energy Act 2023;”;
- (c) for the definition of “relevant licence” substitute–
- ““relevant licence” means a licence under section 7 of the Energy Act 2023.”

#### **45 Conduct of administration, transfer schemes etc**

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), for “or section 33 of the Nuclear Energy (Financing) Act 2022” substitute “, section 33 of the Nuclear Energy (Financing) Act 2022 or section 44 of the Energy Act 2023”.

#### *Licence modifications*

#### **46 Modification of conditions of licences**

- (1) The Secretary of State may modify the conditions of a T&S company’s licence (“the section 7 licence”) so that they include–
- (a) conditions relating to the recovery of amounts owed to the Secretary of State by the T&S company by virtue of, or otherwise relating to, financial assistance given by the Secretary of State while a T&S administration order is in force in relation to the T&S company;
- (b) conditions relating to raising of funds for the purpose of meeting of expenses arising by virtue of the order.

- (2) The Secretary of State may exercise the power under subsection (1) only if a T&S administration order is in force in relation to the T&S company.
- (3) Before making a modification under subsection (1), the Secretary of State must consult—
  - (a) the economic regulator,
  - (b) if the section 7 licence authorises activities within section 2(2)(a), the person who granted any associated licence under section 18 of the Energy Act 2008, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (4) The power to make modifications under subsection (1) includes power to make such incidental, consequential or transitional modifications as the Secretary of State considers necessary or expedient.
- (5) In subsection (1)(a), “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.
- (6) For the purposes of this section, a licence under section 18 of the Energy Act 2008 (“the carbon storage licence”) is an “associated licence” in relation to the section 7 licence if—
  - (a) the carbon storage licence is in respect of activities within section 17(2)(a) of that Act, and
  - (b) any part of the site to which the section 7 licence relates is within any place to which the carbon storage licence relates.

*Powers to modify enactments*

**47 Modification under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002), for “or section 33 of the Nuclear Energy (Finance) Act 2022” substitute “, section 33 of the Nuclear Energy (Finance) Act 2022 or section 44 of the Energy Act 2023”.

**48 Power to make further modifications of insolvency legislation**

- (1) The Secretary of State may by regulations—

- (a) provide for insolvency legislation to apply in relation to any provision made by or under this Chapter;
  - (b) make such modifications of insolvency legislation as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter (including any insolvency legislation that is applied under paragraph (a)).
- (2) In relation to regulations under subsection (1), “insolvency legislation” means—
- (a) the Insolvency Act 1986,
  - (b) Chapter 3 of Part 3 of the Energy Act 2004, and
  - (c) any other provision that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986, and is—
    - (i) contained in an Act passed before this Act or in the same Session, or
    - (ii) made under an Act before the regulations come into force.
- (3) Provision made under subsection (1) may amend this Chapter.
- (4) Regulations under this section are subject to the affirmative procedure.

#### *Interpretation*

#### **49 Interpretation of Chapter 4**

- (1) In this Chapter—
- “business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;
  - “company” means—
    - (a) a company registered under the Companies Act 2006, or
    - (b) an unregistered company;
  - “court”, in relation to a company, means the court—
    - (a) having jurisdiction to wind up the company, or
    - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);
  - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
  - “non-GB company” means a company incorporated outside Great Britain;
  - “objective of a transport and storage administration” is to be construed in accordance with section 43;
  - “subsidiary” and “wholly-owned subsidiary” have the meaning given by section 1159 of the Companies Act 2006;
  - “T&S administration order” (or “transport and storage administration order”) has the meaning given by section 42(1);

“T&S administrator” has the meaning given by section 42(2)(c) and is to be construed in accordance with subsection (2) of this section;

“T&S company” has the meaning given by section 42(2)(b);

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

- (2) In this Chapter references to the T&S administrator of a company –
- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 44 of this Act to be the T&S administrator of that company, and
  - (b) where two or more persons are appointed to be the T&S administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 44 of this Act.

## CHAPTER 5

### TRANSFER SCHEMES

#### 50 Transfer schemes

- (1) This section applies where –
- (a) a termination event has arisen in relation to a licence, and
  - (b) the economic regulator has complied with its duties under section 17 in relation to the termination event.
- (2) The Secretary of State may make a scheme for the transfer of designated property, rights or liabilities of the licence holder to a person falling within subsection (3), or two or more of those persons, with the objective of –
- (a) securing that the activities authorised by the licence continue in a manner which –
    - (i) is efficient and economical, and
    - (ii) ensures the safety and security of the transport and storage network, or the part of that network, to which the licence relates, or
  - (b) facilitating the cessation of the transportation and injection of carbon dioxide authorised by the licence and ensuring the safety and security of the transport and storage network, or the part of that network, to which the licence relates.
- (3) The persons to whom a scheme may transfer designated property, rights or liabilities are –
- (a) the Secretary of State;
  - (b) any person the Secretary of State considers to be an appropriate person to achieve the objective in subsection (2)(a) or (as the case may be) (b).

- (4) In determining whether a person is an appropriate person for the purposes of subsection (3)(b), the Secretary of State must take into account whether the person would be able to meet the conditions and requirements of any licence or permit that would be transferred to the person under the proposed scheme.
- (5) The Secretary of State may not make a scheme without the consent of—
  - (a) the licence holder, and
  - (b) where the scheme would transfer designated property, rights and liabilities to a person or persons falling within subsection (3)(b), each such person.
- (6) In this section—
  - “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
  - “termination event” has the meaning given by section 17.

## **51 Consultation in relation to transfers**

- (1) If the Secretary of State proposes to make a scheme under section 50, the Secretary of State must consult the licence holder mentioned in section 50(2) (“the proposed transferor”) before making the scheme.
- (2) If the Secretary of State proposes to make a scheme under section 50 which transfers designated property, rights or liabilities to a person or persons falling within section 50(3)(b) (“the proposed transferee or transferees”), the Secretary of State must consult before making the scheme—
  - (a) the proposed transferee or transferees, and
  - (b) where a proposed transferee is not a public authority—
    - (i) the economic regulator,
    - (ii) the Health and Safety Executive,
    - (iii) the Oil and Gas Authority,
    - (iv) the appropriate devolved authorities (if any), and
    - (v) such other persons as the Secretary of State considers appropriate.
- (3) The matters on which the Secretary of State is to consult the proposed transferor, and the proposed transferee or transferees, must include the provision the proposed scheme should make.
- (4) The matters on which the Secretary of State is to consult a body or person falling within subsection (2)(b)(i) to (v) must include whether the proposed transferee is an appropriate person, or whether the proposed transferees are appropriate persons, for the purposes of section 50(3)(b).
- (5) For the purposes of subsection (2)(b)(iv) the “appropriate devolved authorities” are—
  - (a) the Welsh Ministers, if provision making the proposed scheme 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);

- (b) the Scottish Ministers, if provision making the proposed scheme would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (c) the Department for the Economy in Northern Ireland, if provision making the proposed scheme –
    - (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.
- (6) In this section, “designated” has the same meaning as in section 50.

## **52 Conduct of transfer schemes**

Schedule 4 contains further provision about transfer schemes under section 50.

## **CHAPTER 6**

### **MISCELLANEOUS AND GENERAL**

## **53 Cooperation of storage licensing authority with economic regulator**

- (1) In Chapter 3 of Part 1 of the Energy Act 2008 (storage of carbon dioxide), after section 34 insert –

### **“34A Cooperation with economic regulator**

- (1) This section applies where a licence holder also holds a relevant licence.
- (2) The licensing authority who granted the licence to the licence holder must provide such assistance as the economic regulator may reasonably require in carrying out its functions in relation to the relevant licence.
- (3) The licensing authority must, in particular, inform the economic regulator if it becomes aware of –
  - (a) circumstances that have arisen, or are likely to arise, in relation to the activities authorised by the licence which, in the opinion of the licensing authority, could affect the carrying on of activities authorised by the relevant licence;
  - (b) circumstances that have arisen, or are likely to arise, in which the licence or a storage permit granted under the licence may be terminated.
- (4) In this section –

“economic regulator” has the same meaning as in Part 1 of the Energy Act 2023 (see section 55 of that Act);

“relevant licence” means a licence under section 7 of the Energy Act 2023;

“storage permit” means a storage permit within the meaning of—

- (a) regulation 1(3) of the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221), or
- (b) regulation 1(3) of the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 (S.S.I. 2011/24).

### **34B Information sharing with economic regulator**

- (1) A licensing authority may provide information relating to a licence or a storage permit granted under a licence to the economic regulator for the purpose of enabling or facilitating the exercise of the economic regulator’s functions in relation to a relevant licence.
- (2) Except as provided by subsection (3), the disclosure of information under this section does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (3) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by subsection (1) is to be taken into account).
- (4) In this section—

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“economic regulator”, “relevant licence” and “storage permit” have the same meaning as in section 34A;

“information” includes advice.”
- (2) In section 8 of the Energy Act 2016 (matters to which the Oil and Gas Authority must have regard), in subsection (1), in the paragraph headed “Collaboration”, after “government of the United Kingdom” insert “, with the Gas and Electricity Markets Authority,”.

## **54 Amendments related to Part 1**

Schedule 5 contains amendments related to this Part.

## **55 Interpretation of Part 1**

In this Part—

- “carbon dioxide stream” means a flow of substances that results from carbon dioxide capture processes;
- “CMA” means the Competition and Markets Authority;
- “contravention”, in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions are to be construed accordingly;
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- “economic regulator” has the meaning given by section 1(2);
- “enactment” includes –
- (a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);
  - (b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
  - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
  - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
  - (e) any retained direct EU legislation;
- “final order” has the meaning given by section 31(4);
- “financial year” means a financial year of the economic regulator;
- “functions” includes powers and duties;
- “geological formation” means a lithostratigraphical subdivision within which distinct rock layers can be found and mapped;
- “geological storage”, in relation to carbon dioxide, means storage of carbon dioxide streams in underground geological formations with a view to the permanent containment of carbon dioxide (and references to geological storage are to be read as including injection);
- “grantor” has the meaning given by section 9(10);
- “licence”, except where the context otherwise requires, means a licence under section 7, and “licence holder” is to be interpreted accordingly;
- “licensable activities” has the meaning given by section 1(10);
- “licensable means of transportation” has the meaning given by section 2(3);
- “modifications” includes additions, alterations and omissions and cognate expressions are to be construed accordingly;
- “operates”, in relation to a site for the geological storage of carbon dioxide, is to be interpreted in accordance with section 2(10);
- “provisional order” has the meaning given by section 31(4);
- “transport and storage network” has the meaning given by section 1.



**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);
- “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).

*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—
- (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.

*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;
  - (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)).

*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.

## **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).
- (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.

### *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).
- (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.

## **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).

### *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).
- (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.

#### **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.
- (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).

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

## **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).

### *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).
- (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—
  - (a) exercise the power under paragraph (a) of subsection (1) so that more than one designation has effect under that paragraph;
  - (b) 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—

  - (a) has been produced by commercial or industrial activities,
  - (b) is in the atmosphere, or
  - (c) 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 –
- (a) the territorial sea adjacent to the United Kingdom;
  - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

#### **68 Direction to offer to contract with eligible carbon capture entity**

- (1) 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.
- (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 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).

#### *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".

## **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;
  - (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).

## **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.

## **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.
- (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.

#### *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);
  - (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.

#### **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.

## **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”.
- (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.

## **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 –
    - (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.

## **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
  - (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.

## **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;
  - (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.

**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.

**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 –

- (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.

*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.

## **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
  - (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.

### *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;
  - (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.

### *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 30O 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 30O 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).

### *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
  - (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.

#### *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.
- (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.
- (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.

## **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.

### *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.

## **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);
  - (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.

## **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 –
  - (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.

## **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.
- (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”.

## CHAPTER 2

### DECOMMISSIONING OF CARBON STORAGE INSTALLATIONS

#### *Financing of costs of decommissioning etc*

#### **92 Financing of costs of decommissioning etc**

- (1) The Secretary of State may by regulations make provision for requiring relevant persons to provide security for the performance of obligations relating to the future abandonment or decommissioning of carbon dioxide-related sites, pipelines or installations.



- (2) For the purposes of subsection (1) an installation, site or pipeline is “carbon dioxide-related” if it is, or is to be, used for a purpose related to the geological storage, or transportation, of carbon dioxide.
- (3) In this section references to an installation, site or pipeline include one that is located in, under or over –
  - (a) the territorial sea adjacent to the United Kingdom, or
  - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (4) The following provisions of this section are without prejudice to the generality of subsection (1).
- (5) In this section “relevant person” means a person who –
  - (a) holds a licence under section 7, or
  - (b) is a person to whom a notice has been, or may be, given under section 29 of the Petroleum Act 1998 (preparation of abandonment programmes) in respect of a carbon storage installation.
- (6) Regulations under subsection (1) may –
  - (a) require relevant persons to provide the Secretary of State with estimates of costs that are likely to be incurred in connection with obligations such as are mentioned in subsection (1) (“decommissioning costs”);
  - (b) make provision about the estimation of decommissioning costs and about the manner in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
  - (c) require relevant persons to review estimates of decommissioning costs at times, or at intervals, specified in the regulations;
  - (d) make provision about the approval by the Secretary of State of estimates of such costs;
  - (e) provide for information specified, or of a description specified, in the regulations to be supplied to the Secretary of State by relevant persons at such intervals, or on such occasions, as may be prescribed by the regulations;
  - (f) require the Secretary of State to consult the Oil and Gas Authority or any other person specified in the regulations before exercising functions by virtue of paragraph (d).
- (7) Regulations under subsection (1) may make provision –
  - (a) requiring that security for the discharge of liabilities in respect of decommissioning costs must be provided by way of a fund (a “decommissioning fund”);
  - (b) about the management of decommissioning funds;
  - (c) about payments to a relevant person, or another person, from such funds;
  - (d) providing for payments from such funds to be subject to the approval of the Secretary of State;

- (e) imposing on a relevant authority functions with regard to—
  - (i) the monitoring and oversight of decommissioning funds;
  - (ii) the approval of any matter relating to such a fund.
- (8) This section is without prejudice to the breadth of subsection (4) of section 30 of the Energy Act 2008.
- (9) Regulations under subsection (1) may require the Secretary of State to publish guidance about—
  - (a) estimates of decommissioning costs (including factors which it may be appropriate to consider in deciding whether or not to approve estimates of such costs);
  - (b) the structure, accrual and management of decommissioning funds.
- (10) Guidance by virtue of this section may make different provision for different cases or circumstances.
- (11) In this section—
  - “carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;
  - “decommissioning costs” is to be interpreted in accordance with subsection (6)(a);
  - “decommissioning fund” is to be interpreted in accordance with subsection (7)(a);
  - “economic regulator” has the same meaning as in Part 1 (see section 55);
  - “geological storage” has the same meaning as in Part 1 (see section 55);
  - “relevant authority” means the Secretary of State, the economic regulator or the Oil and Gas Authority.

### **93 Section 92: supplementary**

- (1) Regulations under section 92(1) may make provision—
  - (a) enabling a relevant authority to charge fees to relevant persons in order to cover the costs of the exercise of the authority’s functions under the regulations;
  - (b) about how fees payable by virtue of the regulations are to be determined;
  - (c) about when fees payable by virtue of the regulations are to be paid.
- (2) Regulations under section 92(1) may make provision about the supplying of information, including—
  - (a) provision for the Secretary of State to require any other person to supply information to the Secretary of State for the purposes of the Secretary of State’s functions under regulations under that section;
  - (b) about the sharing by the Secretary of State with the Oil and Gas Authority or the economic regulator of information about funds established as mentioned in section 92(7)(a).

- (3) Regulations under section 92(1) may make provision about compliance with requirements imposed by or under the regulations, including –
  - (a) provision imposing civil penalties;
  - (b) provision making it an offence to contravene specified provisions of the regulations.
- (4) Where regulations under section 92(1) provide for the imposition of a civil penalty, they must also provide for a right of appeal against the imposition of the penalty.
- (5) Where regulations under section 92(1) create an offence, they must also make provision as to the mode of trial and punishment of offences, but –
  - (a) any provision as to punishment on summary conviction must not authorise imprisonment or, in the case of summary conviction in Scotland or Northern Ireland, a fine exceeding the statutory maximum;
  - (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (6) Regulations under section 92(1) may –
  - (a) make different provision for different purposes;
  - (b) create exceptions to any requirement imposed by the regulations.
- (7) Regulations under section 92(1) may confer any function on any person.
- (8) Regulations under section 92(1) may provide for a function conferred on a person to be exercisable on that person’s behalf by another person.
- (9) In this section –
  - “economic regulator” has the same meaning as in Part 1 (see section 55);
  - “relevant authority” means the Secretary of State, the economic regulator or the Oil and Gas Authority;
  - “relevant person” has the same meaning as in section 92.
- (10) Regulations under section 92(1) may make any amendments of –
  - (a) the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221),
  - (b) the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations 2011 (S.S.I. 2011/24),
  - (c) the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I. 2011/1483), or
  - (d) the Storage of Carbon Dioxide (Licensing etc.) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 387),that the Secretary of State considers appropriate in consequence of, or of provision made under, section 92 or this section.
- (11) Regulations under section 92(1) containing any of the following (with or without other provision) are subject to the affirmative procedure –
  - (a) provision creating a criminal offence;
  - (b) provision creating a civil penalty.

- (12) Any other regulations under section 92(1) are subject to the negative procedure.

#### **94 Regulations under section 92(1): procedure with devolved authorities**

- (1) Before making regulations under section 92(1) that contain provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority –
- (a) stating that the Secretary of State proposes to make regulations under section 92(1), and
  - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to the provision within the relevant devolved competence, and must consider any representations duly made and not withdrawn.
- (2) In this section, “relevant devolved authority”, in relation to regulations, means –
- (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;
  - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;
- and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.
- (3) For the purposes of this section, provision –
- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) is within Welsh devolved competence if it 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) is within Northern Ireland devolved competence if it –
    - (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 references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.

*Abandonment of carbon storage installations etc*

**95 Provisions relating to Part 4 of the Petroleum Act 1998**

- (1) Section 30 of the Energy Act 2008 (abandonment of installations) is amended in accordance with subsections (2) to (6).
- (2) In subsection (1), for “, (2)” substitute “to (2)”.
- (3) After subsection (1A) insert—
  - “(1AA) Part 4 of the 1998 Act, in its application in relation to carbon storage installations, has effect with the modifications set out in subsection (1AB).
  - (1AB) The modifications are as follows—
    - (a) in section 30 of the 1998 Act, for subsections (5) and (6) substitute—
      - “(5) This subsection applies to a person in relation to a carbon storage installation if—
        - (a) the person has the right—
          - (i) to use a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal),
          - (ii) to convert any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal), or
          - (iii) to explore a controlled place with a view to, or in connection with, the carrying on of the activities within sub-paragraph (i) or (ii), and
        - (b) either—
          - (i) any activity mentioned in subsection (6) is carried on from, by means of or on the installation, or
          - (ii) the person intends to carry on an activity mentioned in that subsection from, by means of or on the installation,
      - or if the person had such a right when any such activity was last so carried on.
    - (6) The activities referred to in subsection (5) are—
      - (a) the use of a controlled place for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its

- permanent disposal) in the exercise of the right mentioned in subsection (5)(a);
- (b) the conversion of any natural feature in a controlled place for the purpose of storing carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal) in the exercise of the right mentioned in subsection (5)(a);
  - (c) the exploration of a controlled place in the exercise of the right mentioned in subsection (5)(a) with a view to, or in connection with, the carrying on of activities within paragraph (a) or (b) of this subsection;
  - (d) the conveyance in the controlled place mentioned in subsection (5)(a) of carbon dioxide by means of a pipe or system of pipes, in the exercise of the right mentioned in subsection (5)(a); and
  - (e) the provision of accommodation for persons who work on or from an installation which is or has been maintained, or is intended to be established, for the carrying on of an activity falling within any of paragraphs (a) to (d) of this subsection.”;
- (b) in section 30(7) of that Act, in the words before paragraph (a), for “(c)” substitute “(e)”;
- (c) in section 31 of that Act, for subsection (B1) substitute –
- “(B1) This subsection applies to an activity if –
    - (a) where the activity is within paragraph (a), (b) or (c) of section 30(6), the controlled place mentioned in that paragraph is one for which the installation is, or is to be, established or maintained;
    - (b) where the activity is within paragraph (d) of section 30(6), the conveyance of the carbon dioxide relates to a controlled place for which the installation is, or is to be, established;
    - (c) where the activity is within paragraph (e) of section 30(6), the installation is in a controlled place in respect of which P has a licence under section 18 of the Energy Act 2008.”;
- (d) in section 31 of that Act, omit subsection (C1);

- (e) in section 45 of that Act, in the appropriate place insert—
- ““controlled place” has the same meaning as in section 17 of the Energy Act 2008;””
- (4) After subsection (4A) insert—
- “(4B) The powers in subsections (2)(b) and (4) include power to amend or repeal subsections (1AA) and (1AB).”
- (5) In subsection (5), for the words from “falling” to the end substitute “which is or has been maintained, or is intended to be established, for the purposes of an activity mentioned in section 17(2)(a), (b) or (c) to which subsection (6) applies.”
- (6) In subsection (6), for the words from the beginning to “it” substitute “This subsection applies to any activity which is carried on from, by means of or on an installation which”.
- (7) The power of the Scottish Ministers under section 30(2)(b) of the Energy Act 2008 to modify Part 4 of the Petroleum Act 1998 in its application to certain carbon storage installations includes power to make any modifications of that Part of that Act (in its application to the installations in question) that the Scottish Ministers consider appropriate in consequence of provision made by or under section 92 or 93.
- (8) The power of the Secretary of State under section 30(4) of the Energy Act 2008 to modify Part 4 of the Petroleum Act 1998 in its application to certain carbon storage installations includes power to make any modifications of that Part of that Act (in its application to the installations in question) that the Secretary considers appropriate in consequence of provision made by or under section 92 or 93.
- (9) In section 29 of the Petroleum Act 1998 (preparation of programmes), in subsection (6), for the words from “in question,” to the end substitute “in question if the Secretary of State has under section 32—
- (a) rejected that programme, or
- (b) approved it (whether or not the approval has been withdrawn).”
- (10) Section 38A of the Petroleum Act 1998 (protection of funds set aside for the purposes of abandonment programme) has effect as if the reference in subsection (1) of that section to the performance of obligations under an approved abandonment programme included a reference to the meeting of liabilities in respect of decommissioning costs in relation to carbon storage installations.
- (11) In this section—
- “carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;
- “decommissioning costs” has the meaning given by section 92.

*Change of use relief*

**96 Change of use relief: installations**

- (1) Section 30A of the Energy Act 2008 (installations converted for CCS demonstration projects) is amended as follows.
- (2) For the heading substitute “Change of use relief for certain installations”.
- (3) In subsection (1), for “by order” insert “, on an application made by a relevant person, by notice”.
- (4) Omit subsections (2) and (3).
- (5) Before subsection (4) insert—
  - “(3A) The Secretary of State must consult the Oil and Gas Authority before deciding—
    - (a) whether to designate an installation under subsection (1);
    - (b) whether to make a certification under subsection (5)(b).”
- (6) For subsection (4) substitute—
  - “(4) An eligible CCS installation qualifies for change of use relief if—
    - (a) the Secretary of State has given a CCS-related abandonment programme notice to a person in relation to the abandonment of the installation, and
    - (b) the trigger event has occurred in relation to the installation.
  - (4A) In subsection (4) “CCS-related abandonment programme notice” means an abandonment programme notice given under section 29 of the 1998 Act in that section’s application in relation to carbon storage installations (by virtue of section 30 of this Act).”
- (7) For subsection (5) substitute—
  - “(5) The trigger event occurs in relation to an eligible CCS installation when—
    - (a) a decommissioning fund (as defined in section 92(7) of the Energy Act 2023) has been established for providing security for the discharge of liabilities in respect of decommissioning costs in relation to the installation, and
    - (b) the Secretary of State certifies by notice in writing (an “approval notice”) that one or more relevant persons have paid into the fund an amount or amounts the total of which is not less than the required amount.
  - (5A) In subsection (5)—
    - (a) “relevant person” means a person of a description specified in regulations made by the Secretary of State;



- (b) “the required amount” means an amount determined by the Secretary of State in accordance with regulations made by the Secretary of State.
- (5B) Where the Secretary of State gives an approval notice in relation to an eligible CCS installation the Secretary of State must—
- (a) give a copy of the approval notice to every person to whom a notice has been given under section 29(1) of the 1998 Act in relation to the installation, and
  - (b) publish a notice that—
    - (i) specifies the installation, and
    - (ii) states that the Secretary of State has given an approval notice under subsection (5)(b) in relation to it.”
- (8) In subsection (11), for “an order made” substitute “a notice given”.
- (9) After subsection (11) insert—
- “(11A) The Secretary of State must publish a notice given under subsection (1).”
- (10) In subsection (12)—
- (a) for ““CCS demonstration project” and “commercial electricity generation” have the same meanings” substitute “has the same meaning”;
  - (b) omit the definition of “carbon storage facility”;
  - (c) at the appropriate places insert—
    - ““decommissioning costs” has the meaning given by section 92 of the Energy Act 2023;”;
    - ““relevant person” means a person to whom a notice may be given under section 29(1) of the 1998 Act in relation to an offshore installation (within the meaning given by section 44 of the 1998 Act);”.

## 97 Change of use relief: carbon storage network pipelines

- (1) Section 30B of the Energy Act 2008 (submarine pipelines converted for CCS demonstration projects) is amended as follows.
- (2) For the heading substitute “Change of use relief: carbon storage network pipelines”.
- (3) For “CCS pipeline”, in each place it occurs, substitute “carbon storage network pipeline”.
- (4) In subsection (1), for “by order” insert “, on an application made by a relevant person, by notice”.

- (5) After subsection (1) insert –
- “(1A) The Secretary of State must consult the Oil and Gas Authority before deciding –
- (a) whether to designate a pipeline under subsection (1);
  - (b) whether to make a certification under subsection (3)(b).”
- (6) For subsection (2) substitute –
- “(2) An eligible carbon storage network pipeline qualifies for change of use relief if –
- (a) the Secretary of State has given a CCS-related abandonment programme notice to a person in relation to the abandonment of the pipeline, and
  - (b) the trigger event has occurred in relation to the pipeline.
- (2A) In subsection (2) “CCS-related abandonment programme notice” means an abandonment programme notice under section 29 of the 1998 Act given at a time when the pipeline is used, or is to be used wholly or mainly –
- (a) for the purpose of disposing of carbon dioxide by way of geological storage, or
  - (b) as a licensable means of transportation.”
- (7) For subsection (3) substitute –
- “(3) The trigger event occurs in relation to an eligible carbon storage network pipeline when –
- (a) a decommissioning fund (as defined in section 92(7) of the Energy Act 2023) has been established for providing security for the discharge of liabilities in respect of decommissioning costs in relation to the pipeline, and
  - (b) the Secretary of State certifies by notice in writing (an “approval notice”) that one or more relevant persons have paid into the fund an amount or amounts the total of which is not less than the required amount.
- (3A) In subsection (3) –
- (a) “relevant person” means a person of a description specified in regulations made by the Secretary of State;
  - (b) “the required amount” means an amount determined by the Secretary of State in accordance with regulations made by the Secretary of State.
- (3B) Where the Secretary of State gives an approval notice in relation to an eligible carbon storage network pipeline, the Secretary of State must –
- (a) give a copy of the approval notice to every person to whom a notice has been given under section 29(1) of the 1998 Act in relation to the pipeline, and

- (b) publish a notice that—
  - (i) specifies the pipeline, and
  - (ii) states that the Secretary of State has given an approval notice under subsection (3)(b) in relation to it.”
- (8) In subsection (6), for “an order made” substitute “a notice given”.
- (9) After subsection (6) insert—
 

“(6A) The Secretary of State must publish a notice given under subsection (1).”
- (10) In subsection (7)—
  - (a) for “and “CCS demonstration project” have the same meanings” substitute “has the same meaning”;
  - (b) omit the definition of “carbon storage facility”;
  - (c) at the appropriate places insert—
    - ““decommissioning costs” has the meaning given by section 92 of the Energy Act 2023;”;
    - ““geological storage”, in relation to carbon dioxide, has the same meaning as in Part 1 of the Energy Act 2023 (see section 55 of that Act);”;
    - ““licensable means of transportation” has the meaning given by section 2(3) of the Energy Act 2023;”;
    - ““relevant person” means a person to whom a notice may be given under section 29(1) of the 1998 Act in relation to a submarine pipeline;”.

## 98 Change of use relief: supplementary

- (1) In the Energy Act 2008, after section 30B insert—
 

**“30C Relief under sections 30A and 30B: supplementary**

  - (1) The Secretary of State may by regulations make provision about the obtaining of information required, and sharing of information held, for the purposes of functions of the Secretary of State under sections 30A and 30B, including provision—
    - (a) for the Secretary of State to require the holder of a licence under section 7 of the Energy Act 2023, or a person who qualifies for change of use relief under section 30A or 30B, to provide information to the Secretary of State;
    - (b) authorising His Majesty’s Revenue and Customs (or anyone acting on their behalf) to disclose to the Secretary of State information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005;
    - (c) for the enforcement of any requirement imposed by virtue of the regulations.

- (2) For the purposes of subsection (1), a person “qualifies for change of use relief” if—
  - (a) but for section 30A(6) they would be a person to whom a notice may be given under section 29(1) of the Petroleum Act 1998 in relation to a carbon storage installation, or
  - (b) but for section 30B(4) they would be a person to whom a proposal may be made under section 29(1) of the Petroleum Act 1998 in relation to a submarine pipeline.
- (3) In this section—
 

“carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;

“submarine pipeline” has the same meaning as in Part 4 of the 1998 Act (see section 45 of that Act).”
- (2) In section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation), in subsection (2) omit paragraph (aa).

### CHAPTER 3

#### STRATEGY AND POLICY STATEMENT

#### 99 Designation of strategy and policy statement

- (1) The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Part (“the CCUS strategy and policy statement”) if the requirements set out in section 102 are satisfied (consultation and laying requirements).
- (2) The CCUS strategy and policy statement is a statement prepared by the Secretary of State that sets out—
  - (a) the strategic priorities, and other main considerations, of His Majesty’s government in formulating its carbon dioxide capture, usage and storage policy for the United Kingdom (“strategic priorities”),
  - (b) the particular outcomes to be achieved as a result of the implementation of that policy (“policy outcomes”), and
  - (c) the roles and responsibilities of persons (whether the Secretary of State, the economic regulator or other persons) who are involved in implementing that policy or who have other functions that are affected by it.
- (3) In preparing a statement for designation under subsection (1) (or undertaking a review under section 101), the Secretary of State must take account of any statement for the time being designated under section 131 of the Energy Act 2013 (strategy and policy statement in respect of energy policy).
- (4) The Secretary of State must publish the CCUS strategy and policy statement (including any amended statement following a review under section 101) in such manner as the Secretary of State considers appropriate.

- (5) For the purposes of this section, carbon dioxide capture, usage and storage policy “for the United Kingdom” includes such policy for—
- (a) the territorial sea adjacent to the United Kingdom, or
  - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (6) In this Chapter—
- “the CCUS strategy and policy statement” means the statement for the time being designated under subsection (1) as the strategy and policy statement for the purposes of this Part;
  - “economic regulator” has the same meaning as in Part 1 (see section 55);
  - “policy outcomes” has the meaning given in subsection (2)(b);
  - “strategic priorities” has the meaning given in subsection (2)(a).

#### **100 Duties with regard to considerations in the statement**

- (1) The economic regulator must have regard to the strategic priorities set out in the CCUS strategy and policy statement when carrying out CCUS-related functions under this Part or Part 1.
- (2) The Secretary of State and the economic regulator must carry out their respective CCUS-related functions under Part 1 and this Part in the manner which the Secretary of State or the economic regulator (as the case may be) considers is best calculated to further the delivery of the policy outcomes.
- (3) Subsection (2) is subject to the application of the principal objectives in the carrying out of any such function.
- (4) Subsections (1) and (2) do not apply to anything done by the economic regulator—
  - (a) in the exercise of functions relating to the determination of disputes;
  - (b) in the exercise of functions under section 36(1) or 37(1).
- (5) The duties imposed by subsections (1) and (2) do not affect the obligation of the economic regulator or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment or otherwise).
- (6) The economic regulator must give notice to the Secretary of State if at any time the economic regulator concludes that a policy outcome contained in the strategy and policy statement is not realistically achievable.
- (7) A notice under subsection (6) must include—
  - (a) the grounds on which the conclusion was reached;
  - (b) what (if anything) the economic regulator is doing, or proposes to do, for the purpose of furthering the delivery of the outcome so far as reasonably practicable.
- (8) In this section—

“CCUS-related functions” means functions to which the strategic priorities are relevant (not including functions under sections 69 to 72, 84(1) or (2) or 89, or other functions so far as carried out in connection with those functions);

“principal objectives” means the principal objectives of the Secretary of State and the economic regulator set out in section 1(1).

## 101 Review

- (1) The Secretary of State must review the CCUS strategy and policy statement if a period of 5 years has elapsed since the relevant time.
- (2) In this section “relevant time”, in relation to the CCUS strategy and policy statement, means –
  - (a) the time when the statement was first designated under section 99, or
  - (b) if later, the time when a review of the statement under this section last took place.
- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5 year period.
- (4) The Secretary of State may review the CCUS strategy and policy statement at any other time if –
  - (a) a Parliamentary general election has taken place since the relevant time,
  - (b) the economic regulator has given notice to the Secretary of State under section 100(6) since the relevant time,
  - (c) a significant change in the policy of His Majesty’s government with regard to carbon dioxide capture, usage and storage has occurred since the relevant time,
  - (d) the Secretary of State has commenced a review under section 134 of the Energy Act 2013 since the relevant time,
  - (e) the Parliamentary approval requirement in relation to an amended statement was not met on the last review (see subsection (13)).
- (5) The Secretary of State may determine that a significant change in the government’s policy with regard to carbon dioxide capture, usage and storage has occurred for the purposes of subsection (4)(c) only if –
  - (a) the change was not anticipated at the relevant time, and
  - (b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way.
- (6) On a review under this section the Secretary of State may –
  - (a) amend the statement (including by replacing the whole or part of the statement with new content),
  - (b) leave the statement as it is, or
  - (c) withdraw the statement’s designation as the strategy and policy statement.

- (7) The amendment of a statement under subsection (6)(a) has effect only if the Secretary of State designates under section 99 the amended statement as the strategy and policy statement (and the procedural requirements under section 102 apply in relation to any such designation).
- (8) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments made to the statement.
- (9) The designation of a statement as the strategy and policy statement ceases to have effect upon a subsequent designation of an amended statement as the strategy and policy statement in accordance with subsection (7).
- (10) Before proceeding under subsection (6)(b) or (c) the Secretary of State must give notice to the appropriate consultees –
  - (a) setting out the Secretary of State’s proposed decision, and
  - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations must be made,and the Secretary of State must consider any representations which are duly made and not withdrawn.
- (11) For the purposes of subsection (10), the “appropriate consultees” are –
  - (a) the economic regulator;
  - (b) so far as the decision as to whether or not to proceed relates to Scottish devolved matters, the Scottish Ministers;
  - (c) so far as that decision relates to Welsh devolved matters, the Welsh Ministers;
  - (d) so far as that decision relates to Northern Ireland devolved matters, the Department for the Economy in Northern Ireland.
- (12) For the purposes of subsection (2)(b), a review of a statement takes place –
  - (a) where the decision on the review is to amend the statement under subsection (6)(a) –
    - (i) at the time when the amended statement is designated as the CCUS strategy and policy statement under section 99, or
    - (ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament for approval under section 102(9);
  - (b) where the decision on the review is to leave the statement as it is under subsection (6)(b), at the time when that decision is taken.
- (13) For the purposes of subsection (4)(e), the Parliamentary approval requirement in relation to an amended statement was not met on the last review if –
  - (a) on the last review of the strategy and policy statement to be held under this section, an amended statement was laid before Parliament for approval under section 102(9), but
  - (b) the amended statement was not designated because such approval was not given.
- (14) For the purposes of this section –

- (a) something relates to Welsh devolved matters so far as it relates to any matter provision about which 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);
- (b) something relates to Scottish devolved matters so far as it relates to any matter provision about which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
- (c) something relates to Northern Ireland devolved matters so far as it relates to any matter provision about which—
  - (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.

## **102 Procedural requirements**

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it as the CCUS strategy and policy statement.
- (2) In this section references to a statement include references to a statement as amended following a review under section 101(6)(a).
- (3) The Secretary of State must first—
  - (a) prepare a draft of the statement, and
  - (b) issue the draft to the required consultees for the purpose of consulting them about it.
- (4) The “required consultees” are—
  - (a) the economic regulator,
  - (b) the Scottish Ministers,
  - (c) the Department for the Economy in Northern Ireland, and
  - (d) the Welsh Ministers.
- (5) The Secretary of State must then—
  - (a) make such revisions to the draft as the Secretary of State considers appropriate as a result of responses to the consultation under subsection (3)(b), and
  - (b) issue the revised draft for the purposes of further consultation about it to the required consultees and to such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must then—



- (a) make any further revisions to the draft that the Secretary of State considers appropriate as a result of responses to the consultation under subsection (5)(b), and
  - (b) prepare a report summarising those responses and the changes (if any) that the Secretary of State has made to the draft as a result.
- (7) In relation to required consultees within subsection (4)(b) to (d), references in subsections (3)(b) and (5)(b) to consultation about a draft are to consultation about the draft so far as it relates –
  - (a) in the case of the Scottish Ministers, to Scottish devolved matters;
  - (b) in the case of the Department for the Economy in Northern Ireland, to Northern Ireland devolved matters;
  - (c) in the case of the Welsh Ministers, to Welsh devolved matters.
- (8) References in this section to relating to Scottish devolved matters, Northern Ireland devolved matters or Welsh devolved matters are to be interpreted in accordance with section 101(14).
- (9) The Secretary of State must lay before Parliament –
  - (a) the statement as revised under subsection (6)(a), and
  - (b) the report prepared under subsection (6)(b).
- (10) The statement as laid under subsection (9)(a) must have been approved by a resolution of each House of Parliament before the Secretary of State may designate it as the strategy and policy statement under section 99.
- (11) The requirement under subsection (3)(a) to prepare a draft of a statement may be satisfied by preparation carried out before, as well as preparation carried out after, the passing of this Act.

## CHAPTER 4

### CARBON DIOXIDE STORAGE LICENCES

#### **103 Specified provisions in carbon dioxide storage licences**

- (1) Schedule 6 amends Schedule 1 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (“the 2010 Regulations”).
- (2) Subsections (3) to (5) apply in relation to a licence granted (or having effect as if granted) by the Oil and Gas Authority under section 18(1) of the Energy Act 2008 which is in force immediately before the commencement of Schedule 6.
- (3) The licence has effect with the addition of provision having the same legal effect as paragraph 6 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 6 to this Act).
- (4) If the licence confers power on the Oil and Gas Authority to revoke a licence in connection with a change in control of a licence holder which is a company, the licence has effect –

- (a) with the omission of such provision, and
  - (b) with the replacement of such provision by provision having the same legal effect as paragraph 7 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 6 to this Act).
- (5) If the licence confers power on the Oil and Gas Authority to partially revoke a licence in connection with a change in control of a licence holder which is a company, the licence has effect –
- (a) with the omission of such provision, and
  - (b) with the replacement of such provision by provision having the same legal effect as paragraph 8 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 6 to this Act).
- (6) A reference in any document to provisions of a licence which are to have effect with amendments as provided for by Schedule 6 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended.
- (7) A provision inserted in a licence by virtue of Schedule 6 may be altered or deleted by deed executed by the Secretary of State and the licence holder or, as respects Scotland, by an instrument subscribed or authenticated by the Secretary of State and the licence holder in accordance with the Requirements of Writing (Scotland) Act 1995.

#### **104 Content of storage permits under carbon dioxide storage licences**

- (1) In the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (“the 2010 Regulations”), regulation 8 (content of storage permits) is amended as follows –
- (a) after paragraph (1) insert –
    - “(1A) If the operator is a company, a storage permit must also include the provisions contained in paragraph 6(2) to (11) of Schedule 1, read as if –
      - (a) any reference to a company were to the operator,
      - (b) the reference in paragraph 6(8)(b) to the licence were to the storage permit, and
      - (c) paragraph 6(10)(c) were omitted.”;
    - (b) in paragraph (2), for “In this” substitute “In paragraph (1) of this”.
  - (2) Subsection (4) applies in relation to a storage permit granted under an existing licence.
  - (3) “Existing licence” means a licence granted (or having effect as if granted) by the Oil and Gas Authority under section 18(1) of the Energy Act 2008 which is in force immediately before the commencement of subsection (1).
  - (4) The storage permit has effect with the addition of provision having the same legal effect as provision required to be included in the permit by reason of

paragraph (1A) of regulation 8 of the 2010 Regulations (as inserted by subsection (1)(a)).

#### **105 Offences relating to carbon dioxide storage licences**

In section 23 of the Energy Act 2008 (offences relating to carbon dioxide storage licences), after subsection (1) insert—

- “(1A) But a licence holder does not commit an offence under subsection (1)(a) or (b) if—
- (a) the licence holder is a company, or, where there are joint licence holders, any of them is a company, and
  - (b) the thing mentioned in subsection (1)(a) or (b) is a change in the control of the company.”

#### **106 Power of OGA to require information about change in control of licence holder**

After section 29 of the Energy Act 2008 insert—

*“Information about change in control of licence holder*

##### **29A OGA’s power to require information about change in control of licence holder**

- (1) This section applies in relation to a licence granted (or having effect as if granted) by the OGA which includes provisions prohibiting a change in control of a licence holder which is a company without the OGA’s consent.
- (2) The OGA may by notice in writing require a person within subsection (3) to provide the OGA with any information that it requires for the purpose of exercising its functions in relation to a change or potential change in control of a licence holder which is a company.
- (3) The persons within this subsection are—
  - (a) the company;
  - (b) the person who (if consent were granted) would take control of the company;
  - (c) if the company is a joint licence holder with another person or other persons, that other person or those other persons;
  - (d) any person not within any of paragraphs (a) to (c) who appears to the OGA to have information that it requires as mentioned in subsection (2).
- (4) The power conferred by this section does not include power to require the provision of any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications.

- (5) Nothing in this section limits any power of the OGA to require information under –
- (a) regulations under this Chapter,
  - (b) the terms of a licence, or
  - (c) the terms of a permit granted under a licence.”

## CHAPTER 5

### CARBON STORAGE INFORMATION AND SAMPLES

#### *Introductory*

#### **107 Chapter 5: key definitions**

- (1) This section applies for the purposes of this Chapter.
- (2) “Carbon storage licence” means a licence granted, or having effect as if granted, by the OGA under section 18(1) of the Energy Act 2008 (and references to a “licensee” are to a person who holds such a licence).
- (3) “Exploration operator”, in relation to a carbon storage licence, means a person who is responsible for organising or supervising –
  - (a) the carrying on of exploration, within the area within which activities are authorised under the licence, with a view to, or in connection with, the carrying on of activities within section 17(2)(a) or (b) of the Energy Act 2008, or
  - (b) the establishment or maintenance in a controlled place (as defined in section 17 of the Energy Act 2008) of an installation for the purposes of such exploration.
- (4) “Carbon storage information” means information acquired or created by or on behalf of a licensee in the course of carrying out activities under the licensee’s carbon storage licence.
- (5) “Carbon storage samples” means samples of substances acquired by or on behalf of a licensee in the course of carrying out activities under the licensee’s carbon storage licence.
- (6) “Sanctionable requirement” means a requirement imposed on a person by or under a provision of this Chapter which, by virtue of the provision, is sanctionable in accordance with this Chapter.

#### *Requirements relating to information and samples*

#### **108 Retention of information and samples**

- (1) Regulations made by the Secretary of State may require –
  - (a) specified licensees to retain specified carbon storage information;
  - (b) specified licensees to retain specified carbon storage samples.

- (2) “Specified” means specified, or of a description specified, in regulations under this section.
- (3) Regulations under this section may include provision about—
  - (a) the form or manner in which information or samples are to be retained;
  - (b) the period for which information or samples are to be retained;
  - (c) the event that triggers the commencement of that period.
- (4) Regulations under this section may provide for requirements imposed by the regulations to continue following a termination of rights under the licensee’s carbon storage licence (whether by transfer, surrender, expiry or revocation and whether in relation to all or only part of the licence).
- (5) Regulations under this section may not impose requirements which have effect in relation to particular carbon storage information or particular carbon storage samples at any time when an information and samples plan dealing with the information or samples has effect.
- (6) Requirements imposed by regulations under this section are sanctionable in accordance with this Chapter.
- (7) Before making regulations under this section, the Secretary of State must consult each licensing authority that may under section 18(1) of the Energy Act 2008 grant a licence in respect of the carrying on, in a place to which the regulations would apply, of activities within section 17(2) of that Act.
- (8) Regulations under this section are subject to the negative procedure.

### **109 Preparation and agreement of information and samples plans**

- (1) The responsible person must prepare an information and samples plan in connection with any of the following (each “a licence event”)—
  - (a) where a licensee is a company, a change in control of the company within the meaning of paragraph 6 of Schedule 1 to the Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (inserted by Schedule 6 to this Act);
  - (b) a change in the identity of—
    - (i) the exploration operator under a carbon storage licence, or
    - (ii) where a storage permit has been granted under a carbon storage licence, the operator in relation to the storage permit (within the meaning of regulation 1(3) of the Carbon Dioxide (Licensing etc.) Regulations 2010);
  - (c) a transfer of rights under a carbon storage licence, whether in relation to all or part of the area in respect of which the licence was granted;
  - (d) a surrender of rights under a carbon storage licence in relation to all of the area in respect of which the licence was granted, or in relation to so much of that area in respect of which the licence continues to have effect;
  - (e) the expiry of a carbon storage licence;

- (f) the termination of a carbon storage licence;
  - (g) the revocation of a storage permit.
- (2) “Responsible person”, in relation to a licence event, means the person who is or was, or the persons who are or were, the licensee in respect of the relevant licence immediately before the licence event.
- (3) “Relevant licence”, in relation to a licence event, means the carbon storage licence in respect of which the licence event occurs.
- (4) “Information and samples plan”, in relation to a licence event, means a plan dealing with what is to happen, following the event, to –
- (a) carbon storage information held by the responsible person before the event, and
  - (b) carbon storage samples held by that person before the event.
- (5) The responsible person must agree the information and samples plan with the OGA –
- (a) in the case of a licence event mentioned in subsection (1)(a), (b), (c), (d) or (e), before the licence event takes place, or
  - (b) in the case of a licence event mentioned in subsection (1)(f) or (g), within a reasonable period after the termination of the carbon storage licence or revocation of the storage permit.
- (6) An information and samples plan has effect once it is agreed with the OGA.
- (7) If an information and samples plan is not agreed with the OGA as mentioned in subsection (5)(a) or (b), the OGA –
- (a) may itself prepare an information and samples plan in connection with the licence event, and
  - (b) may require the responsible person to provide it with such information as the OGA may require to enable it to do so.
- (8) The OGA must inform the responsible person of the terms of any information and samples plan it prepares in connection with a licence event.
- (9) Where the OGA –
- (a) prepares an information and samples plan in connection with a licence event, and
  - (b) informs the responsible person of the terms of the plan,
- the plan has effect as if it had been prepared by the responsible person and agreed with the OGA.
- (10) Where an information and samples plan has effect in connection with a licence event, the responsible person must comply with the plan.
- (11) The requirements imposed by subsection (5) and (10), or under subsection (7)(b), are sanctionable in accordance with this Chapter.

**110 Information and samples plans: supplementary**

- (1) Where an information and samples plan has effect in relation to a licence event, the OGA and the responsible person may agree changes to the plan.
- (2) Once changes are agreed, the plan has effect subject to those changes.
- (3) Where –
  - (a) two or more persons are the responsible person in relation to a licence event, and
  - (b) those persons include a company that has, since the licence event, been dissolved,the reference to the responsible person in subsection (1) does not include that company.
- (4) An information and samples plan, in relation to a licence event, may provide as appropriate for –
  - (a) the retention, by the responsible person, of any carbon storage information or carbon storage samples held by or on behalf of that person before the licence event,
  - (b) the transfer of any such information or samples to a new licensee, or
  - (c) appropriate storage of such information or samples.
- (5) Where an information and samples plan makes provision under subsection (4) for a person, other than the responsible person, to hold information or samples in accordance with the plan –
  - (a) the plan may, with the consent of that other person, impose requirements on that person in connection with the information and samples, and
  - (b) any such requirements are sanctionable in accordance with this Chapter.
- (6) An information and samples plan prepared by the OGA under section 109 may not include provision under subsection (4)(b) for the transfer of information or samples to another person without the consent of the responsible person.
- (7) An information and samples plan may provide for the storage of information or samples as mentioned in subsection (4)(c) to be the responsibility of the OGA.
- (8) Where a transfer of rights under a carbon storage licence relates to only part of the area in relation to which the licence was granted, the information and samples plan prepared in connection with the transfer is to relate to all carbon storage information and carbon storage samples held by the responsible person before the licence event, and not only information and samples in respect of that part of the area.
- (9) In this section, “licence event” and “responsible person” have the same meaning as in section 109.

### **111 Information and samples coordinators**

- (1) A person within subsection (2) (a “relevant person”) must –
  - (a) appoint an individual to act as an information and samples coordinator, and
  - (b) notify the OGA of that individual’s name and contact details.
- (2) The following persons are within this subsection –
  - (a) a licensee, and
  - (b) an exploration operator under a carbon storage licence.
- (3) The information and samples coordinator is to be responsible for monitoring the relevant person’s compliance with its obligations under this Chapter.
- (4) A relevant person must comply with subsection (1) within a reasonable period after –
  - (a) the date on which this section comes into force, if the person is a relevant person on that date, or
  - (b) becoming a relevant person, in any other case.
- (5) The relevant person must notify the OGA of any change in the identity or contact details of the information and samples coordinator within a reasonable period of the change taking place.
- (6) The requirements imposed by this section are sanctionable in accordance with this Chapter.

### **112 Power of OGA to require information and samples**

- (1) The OGA may by notice in writing, for the purpose of carrying out any of its functions under Chapter 3 of Part 1 of the Energy Act 2008 (storage of carbon dioxide), require –
  - (a) a licensee to provide it with any carbon storage information, or a portion of any carbon storage sample, held by or on behalf of the licensee;
  - (b) a person who holds information or samples in accordance with an information and samples plan to provide it with any such information or a portion of any such sample.
- (2) The notice must specify –
  - (a) the form or manner in which the information or the portion of a sample must be provided;
  - (b) the time at which, or period within which, the information or the portion of a sample must be provided.
- (3) Information requested under subsection (1) may not include items subject to legal privilege.
- (4) Requirements imposed by a notice under this section are sanctionable in accordance with this Chapter.



- (5) Where a person provides information or a portion of a sample to the OGA in accordance with a notice under this section, any requirements imposed on the person in respect of that information or sample by regulations under section 108 are unaffected.

### **113 Prohibition on disclosure of information or samples by OGA**

- (1) Protected material must not be disclosed –
- (a) by the OGA, or
  - (b) by a subsequent holder,
- except in accordance with section 114 or Schedule 7.
- (2) In this section and in Schedule 7 –
- “protected material” means information or samples which have been obtained by the OGA under section 112 or 124;
  - “subsequent holder”, in relation to protected material, means a person holding protected material who has received it directly or indirectly from the OGA by virtue of a disclosure, or disclosures, in accordance with Schedule 7.
- (3) References to disclosing protected material include references to making the protected material available to other persons (where the protected material includes samples).

### **114 Power of Secretary of State to require information and samples**

- (1) The Secretary of State may require the OGA to provide the Secretary of State with such information or samples held by or on behalf of the OGA as the Secretary of State may require for the purpose of –
- (a) carrying out any function conferred by or under any Act,
  - (b) monitoring the OGA's performance of its functions, or
  - (c) any Parliamentary proceedings.
- (2) The Secretary of State may use information or samples acquired under subsection (1) (“acquired material”) only for the purpose for which it is provided.
- (3) Acquired material must not be disclosed –
- (a) by the Secretary of State, or
  - (b) by a subsequent holder,
- except in accordance with this section.
- (4) For the purposes of subsection (3)(b), “subsequent holder”, in relation to acquired material, means a person who receives acquired material directly or indirectly from the Secretary of State by virtue of a disclosure, or disclosures, in accordance with this section.
- (5) Subsection (3) does not prohibit the Secretary of State from disclosing acquired material so far as necessary for the purpose for which it was provided.

- (6) Subsection (3) does not prohibit a disclosure of acquired material if—
  - (a) the disclosure is required by virtue of an obligation imposed by or under any Act, or
  - (b) the OGA consents to the disclosure and, where the acquired material in question was provided to the OGA by or on behalf of another person, confirms that that person also consents to the disclosure.
- (7) References in this section to disclosing acquired material include references to making the acquired material available to other persons (where the acquired material includes samples).

*Enforcement of sanctionable requirements*

**115 Power of OGA to give sanction notices**

- (1) If the OGA considers that a person has failed to comply with a sanctionable 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 sanctionable 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 (subject to section 118(2)),
  - (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 “sanction notice” means—
  - (a) an enforcement notice (see section 116),
  - (b) a financial penalty notice (see section 117),
  - (c) a revocation notice (see section 118), or
  - (d) an operator removal notice (see section 119).
- (4) Sanction notices, other than enforcement notices, may be given in respect of a failure to comply with a sanctionable requirement even if, at the time the notice is given, the failure to comply has already been remedied.
- (5) Where the OGA gives a sanction notice to a person in respect of a particular failure to comply with a sanctionable 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 122 (subsequent sanction notices).
- (6) The OGA’s power to give sanction notices under this section is subject to section 120 (duty of OGA to give sanction warning notices).

- (7) Where the OGA gives a sanction notice to a licensee in respect of a failure to comply with a sanctionable requirement—
- (a) the matter is to be dealt with in accordance with this Chapter, and
  - (b) any requirement under the licensee’s carbon storage licence to deal with the matter in a certain way (including by arbitration) does not apply in respect of that failure to comply.

#### **116 Enforcement notices**

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

#### **117 Financial penalty notices**

- (1) A financial penalty notice is a notice which—
- (a) specifies the sanctionable requirement in question,
  - (b) gives details of the failure to comply with the requirement, and
  - (c) informs the person or persons to whom the notice is given that the person or persons must—
    - (i) comply with the sanctionable requirement before the end of a period specified in the notice, 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.
- (2) The period specified under subsection (1)(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 is given.
- (3) The financial penalty payable under a financial penalty notice in respect of a failure to comply with a sanctionable requirement (whether payable by one person, or jointly by two or more persons) must not exceed £1 million.

- (4) 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.
- (5) 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 subsection (1)(c)(ii).
- (6) 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.
- (7) The OGA may from time to time review guidance issued under subsection (6)(a) and, if it considers appropriate, revise it.
- (8) Before issuing or revising guidance under this section, the OGA must consult such persons as it considers appropriate.
- (9) The OGA must—
  - (a) lay any guidance issued under this section, and any revision of it, before each House of Parliament;
  - (b) publish any guidance issued under this section, and any revision of it, in such manner as the OGA considers appropriate.
- (10) The Secretary of State may by regulations subject to the affirmative procedure amend subsection (3) to change the amount specified to an amount not exceeding £5 million.
- (11) Money received by the OGA under a financial penalty notice must be paid into the Consolidated Fund.

### **118 Revocation notices**

- (1) A revocation notice may be given only in respect of a failure to comply with a sanctionable requirement imposed on a licensee in that capacity.
- (2) Where two or more persons are the licensee in respect of a carbon storage licence, the revocation notice must be given jointly to all of those persons.
- (3) A revocation notice is a notice which—
  - (a) specifies the sanctionable 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—
    - (i) where no storage permit has been granted under the carbon storage licence, the licence is to be terminated, or
    - (ii) where a storage permit has been granted under the carbon storage licence, the permit is to be revoked,on the date specified in the notice (“the revocation date”).

- (4) 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 is given.
- (5) A revocation notice may not be given in circumstances where the carbon storage licence to be terminated, or the storage permit 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.
- (6) Where a carbon storage licence is terminated in accordance with a revocation notice –
  - (a) the rights granted to the licensee by the licence cease on the revocation date;
  - (b) the revocation does not affect any obligation or liability imposed on or incurred by the licensee under the terms and conditions of the licence;
  - (c) the terms and conditions of the licence apply as if the licence had been terminated in accordance with those terms and conditions, subject to section 115(7)(b).
- (7) Where a storage permit is revoked in accordance with a revocation notice –
  - (a) the authorisation granted by the storage permit ceases on the revocation date;
  - (b) the revocation does not affect any obligation or liability imposed or incurred under the terms and conditions of the storage permit;
  - (c) the terms and conditions of the carbon storage licence apply as if the storage permit had been revoked in accordance with those terms and conditions, subject to section 115(7)(b).

### **119 Operator removal notices**

- (1) An operator removal notice may be given only in respect of a failure to comply with a sanctionable requirement imposed on an exploration operator under a carbon storage licence in that capacity.
- (2) An operator removal notice is a notice which –
  - (a) specifies the sanctionable requirement,
  - (b) gives details of the failure to comply with the requirement, and
  - (c) informs the exploration operator to whom it is given that, with effect from a date specified in the notice (“the removal date”), the licensee under whose carbon storage licence the exploration operator operates (“the relevant licensee”) is to be required to remove the exploration operator (see subsection (4)).
- (3) 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 exploration operator with effect from the removal date.

- (4) Where a licensee is required to remove an exploration operator from a specified date, the licensee must ensure that, with effect from that date, the exploration operator does not exercise any function of organising or supervising any of the activities referred to in paragraphs (a) and (b) of section 107(3).
- (5) 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 is given.
- (6) An operator removal notice may not be given in circumstances where the carbon storage licence under which the exploration operator operates is one which, on the date the notice is given, the OGA would not have the power to grant.
- (7) A requirement imposed on a licensee under subsection (3)(b) is sanctionable in accordance with this Chapter.

## **120 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 sanctionable requirement.
- (2) The OGA must give a sanction warning notice in respect of the sanctionable 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 119(2)(c)).
- (3) A sanction warning notice, in respect of a sanctionable requirement, is a notice which—
  - (a) specifies the sanctionable 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 sanctionable requirement, and
  - (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 must 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 sanctionable 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.

## **121 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 its 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 123,
- the OGA must publish details of the cancellation or withdrawal.

## **122 Subsequent sanction notices**

- (1) This section applies where the OGA gives a sanction notice in respect of a particular failure to comply with a sanctionable 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 sanctionable 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
  - (b) a financial penalty notice which requires compliance with the sanctionable 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 116(1)(c) or 117(1)(c)(i), as the case may be (period for compliance with sanctionable requirement).

### **123 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 an operator removal notice, the licensee under whose carbon storage licence the exploration operator operates.

### **124 Sanctions: information powers**

- (1) This section applies for the purposes of an investigation which –
  - (a) concerns whether a person has failed to comply with a sanctionable requirement, and
  - (b) is carried out by the OGA for the purpose of enabling it 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) “Specified” means specified, or of a description specified, in a notice under this section.
- (4) A requirement under subsection (2) applies only to the extent –
  - (a) that the documents requested are documents in the person’s possession or control, or
  - (b) that the information requested is information in the person’s possession or control.
- (5) A requirement imposed by a notice under subsection (2) is sanctionable in accordance with this Chapter.
- (6) 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.
- (7) 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.



*General***125 Appeals**

In Schedule 8—

- (a) Part 1 contains provision about appeals against decisions by the OGA relating to the preparation of an information and samples plan and appeals against the giving of a notice under section 112, and
- (b) Part 2 contains provision about appeals against the imposition of sanction notices and appeals against the giving of a notice under section 124.

**126 Procedure for enforcement decisions**

- (1) The OGA—
  - (a) must determine the procedure that it proposes to follow in relation to enforcement decisions, and
  - (b) must issue a statement of its proposals.
- (2) The procedure mentioned in subsection (1)(a) 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 statement mentioned in subsection (1)(b) must be published in whatever way appears to the OGA to be best calculated to bring the statement to the attention of the public.
- (5) When the OGA takes an enforcement decision, the OGA must follow its stated procedure.
- (6) If the OGA changes its procedure in a material way, it must publish a revised statement.
- (7) 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.
- (8) But subsection (7) does not prevent the Tribunal from taking into account any such failure in considering an appeal under paragraph 4 or 5 of Schedule 8 in relation to a sanction notice.
- (9) In this section, “enforcement decision” means—
  - (a) a decision to give a sanction notice in respect of a failure to comply with a sanctionable requirement, or
  - (b) a decision as to the details of the sanction to be imposed by the notice.

## 127 Interpretation of Chapter 5

In this Chapter –

“information and samples plan” has the meaning given in section 109;

“items subject to legal privilege” –

- (a) in England and Wales, has the same meaning as in the Police and Criminal Evidence Act 1984 (see section 10 of that Act);
- (b) in Scotland, has the meaning given by section 412 of the Proceeds of Crime Act 2002;
- (c) in Northern Ireland, has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 (S.I. 1989/1341 (NI 12));

“OGA” means the Oil and Gas Authority;

“protected material” has the meaning given in section 113;

“sanction notice” has the meaning given in section 115;

“storage permit” has the same meaning as in the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221) (see regulation 1(3) of those Regulations);

“subsequent holder” has the meaning given in section 113;

“Tribunal” means the First-tier Tribunal.

## CHAPTER 6

### GENERAL

## 128 Access to infrastructure

- (1) The Secretary of State may by regulations make provision about the acquisition of rights to use relevant infrastructure (whether existing or proposed).
- (2) In exercising the power under subsection (1) the Secretary of State must have regard to the need to ensure that the process for acquiring such rights operates in a transparent and non-discriminatory manner.
- (3) Without prejudice to the generality of subsection (1), regulations under that subsection may amend, revoke or replace or make provision similar or corresponding to –
  - (a) the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305);
  - (b) the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 388).
- (4) Regulations under subsection (1) –
  - (a) may confer functions (including discretions) on any person;
  - (b) may confer jurisdiction on a court or tribunal;
  - (c) may create criminal offences or impose civil penalties;
  - (d) may make other provision about enforcement;
  - (e) must provide for any offences created by the regulations to be triable –

- (i) only summarily, or
  - (ii) either summarily or on indictment.
- (5) Where regulations under subsection (1) impose a civil penalty, they must also provide for a right of appeal against the imposition of the penalty.
- (6) Before making regulations under subsection (1) the Secretary of State must give to the appropriate consultees a notice –
  - (a) stating that the Secretary of State proposes to make regulations under subsection (1), and
  - (b) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations must be made with respect to the proposed provisions,and must consider any representations duly made and not withdrawn.
- (7) For the purposes of this section the “appropriate consultees” are –
  - (a) the GEMA;
  - (b) 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;
  - (c) 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);
  - (d) 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;
  - (e) the Oil and Gas Authority.
- (8) Regulations under subsection (1) are subject to the affirmative procedure.
- (9) In this section “relevant infrastructure” means –
  - (a) a site for the geological storage of carbon dioxide that is situated in a regulated place, or
  - (b) a pipeline, situated in a regulated place, which is used or intended to be used to convey carbon dioxide to a site falling within paragraph (a),and any associated installations, apparatus or works.
- (10) For the purposes of this section a site or pipeline is situated in a “regulated place” if it is situated –
  - (a) in the United Kingdom, or

- (b) in, under or over –
  - (i) the internal waters of the United Kingdom,
  - (ii) the territorial sea adjacent to United Kingdom, or
  - (iii) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (11) In this section “geological storage” has the same meaning as in Part 1 (see section 55).

## **129 Financial assistance**

- (1) The Secretary of State may provide financial assistance to any person for the purpose of encouraging, supporting or facilitating –
  - (a) transportation of carbon dioxide;
  - (b) storage of carbon dioxide;
  - (c) carbon dioxide capture facilities which operate (or are to operate) in association with facilities for any activity mentioned in paragraph (a) or (b);
  - (d) low carbon hydrogen production;
  - (e) transportation of hydrogen;
  - (f) storage of hydrogen.
- (2) The financial assistance referred to in subsection (1) includes expenditure incurred by the Secretary of State for the purposes of, or in connection with –
  - (a) the establishment of a revenue support counterparty, a hydrogen levy administrator or an allocation body;
  - (b) making payments to a revenue support counterparty.
- (3) Financial assistance under this section –
  - (a) may be provided in any form and in particular by way of grants, loans, guarantees or indemnities or by the provision of insurance;
  - (b) may be provided subject to conditions (which may include conditions about repayment with or without interest or other return);
  - (c) may be provided pursuant to a contract;
  - (d) may be provided to an investment fund for onward investment or for administrative costs relating to onward investment;
  - (e) may be provided by incurring expenditure for the benefit of the person assisted;
  - (f) may be provided by the acquisition of shares or any other interest in, or securities of, a body corporate;
  - (g) may be provided by the acquisition of any undertaking or of any assets.
- (4) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (3)(f) without the consent of the body corporate concerned.

- (5) The power to provide financial assistance under this section is in addition to (and does not limit or replace) any other power of a Minister of the Crown to provide financial assistance.
- (6) In this section—
- “allocation body” has the same meaning as in Chapter 1 (see section 73(6));
  - “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008;
  - “hydrogen levy administrator” has the same meaning as in Chapter 1 (see section 69(6));
  - “low carbon hydrogen production” means production of hydrogen by a method which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases;
  - “revenue support counterparty” has the same meaning as in Chapter 1 (see section 58(6));
  - “storage”, in relation to carbon dioxide, means any storage with a view to the permanent containment of carbon dioxide;
  - “undertaking” means any trade or business or any other activity providing employment.

### PART 3

#### LICENSING OF HYDROGEN PIPELINE PROJECTS

##### *Introductory*

#### 130 Key definitions for Part 3

- (1) In this Part—
- “designated person” means a person in relation to whom a designation under section 131(1) has effect (and any reference to designation, in relation to a person, is to be construed accordingly);
  - “designated project”, in relation to a person, means a hydrogen pipeline project in relation to which the person is designated;
  - “gas transporter licence” means a licence under section 7 of the Gas Act 1986;
  - “hydrogen” means any gas that consists wholly or mainly of hydrogen;
  - “hydrogen pipeline project” means a project involving the construction, alteration or operation of a pipeline for the purpose of the conveyance of hydrogen.
- (2) References in this Part to the extension or restriction of a licence are to the giving of a direction in respect of the licence under (respectively) section 7(4) or (4A) of the Gas Act 1986.

*Designation in relation to hydrogen pipeline projects***131 Designation**

- (1) The Secretary of State may by notice given to a person designate the person in relation to a hydrogen pipeline project.
- (2) The Secretary of State may designate a person in relation to a hydrogen pipeline project only if the Secretary of State is of the opinion—
  - (a) that it is likely to be appropriate for conditions described in section 137(1)(a) and (b) to be included in any gas transporter licence held by the person for the purposes of the project (whether or not the person already holds such a licence), and
  - (b) that the project is likely to result in value for money.
- (3) A person may be designated only with the person’s consent.
- (4) A designation may not relate to more than one hydrogen pipeline project (but a person who is designated in relation to one project may be designated separately in relation to another).

**132 Designation: procedure**

- (1) The Secretary of State must publish a statement setting out—
  - (a) the procedure that the Secretary of State expects to follow in determining whether to exercise the power under section 131(1), and
  - (b) how the Secretary of State expects to determine whether the conditions in section 131(2) are met.
- (2) A duty imposed by subsection (1) may be satisfied by things done before the passing of this Act (as well as by things done after that time).
- (3) A designation notice must include—
  - (a) a description of the hydrogen pipeline project to which the designation relates,
  - (b) the Secretary of State’s reasons for the designation,
  - (c) details of any conditions to which the designation is subject, and
  - (d) the date of the notice.
- (4) The Secretary of State must give the GEMA a copy of a designation notice.
- (5) The Secretary of State must publish a designation notice, but may exclude from publication any material the disclosure or publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.
- (6) In this section, “designation notice” means a notice under section 131(1).

### **133 Revocation of designation**

- (1) The Secretary of State may by notice given to a designated person revoke the person's designation in relation to a hydrogen pipeline project if—
  - (a) either of the conditions in section 131(2) ceases to be met in relation to the project,
  - (b) the Secretary of State determines that a condition to which the designation is subject has not been met, or
  - (c) the person consents to the designation being revoked.
- (2) Section 132(3)(a), (b) and (d), (4) and (5) applies (with necessary modifications) in relation to the revocation of a person's designation as it applies in relation to the designation of a person.
- (3) Where the Secretary of State gives a notice to a person under subsection (1), the person's designation in relation to the hydrogen pipeline project in question ceases to have effect at the end of the day on which the notice is given to the person.
- (4) The revocation of a person's designation in relation to a hydrogen pipeline project does not affect anything done in relation to the licence by the Secretary of State under or by virtue of this Part while the person was designated in relation to the project.

#### *Grant etc of gas transporter licence*

### **134 Grant, extension or restriction of gas transporter licence by Secretary of State**

- (1) The Secretary of State may exercise the power under section 7(2) of the Gas Act 1986 (grant of gas transporter licences) so as to grant a gas transporter licence to a designated person, subject to subsection (2).
- (2) The Secretary of State may only grant a gas transporter licence which authorises the conveyance of hydrogen through pipes for the purposes of the person's designated project.
- (3) The Secretary of State may exercise the power under section 7(4) of the Gas Act 1986 (direction to extend licence) so as to extend a gas transporter licence where—
  - (a) the licence is held by a designated person, and
  - (b) the extension authorises the conveyance of hydrogen through pipes for the purposes of the person's designated project.
- (4) The Secretary of State may exercise the power under section 7(4A) of the Gas Act 1986 (direction to restrict licence) so as to restrict a gas transporter licence where—
  - (a) the licence is or was held by a designated person, and
  - (b) the restriction is in connection with the revocation of the person's designation in relation to a hydrogen pipeline project.

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- (5) In its application for the purposes of subsections (1), (3) and (4), the Gas Act 1986 has effect as if—
- (a) in the following provisions, references to the GEMA were to the Secretary of State—
    - (i) section 7(5) and (6)(a);
    - (ii) section 7B(9);
    - (iii) section 8(3), (4) and (5)(a);
  - (b) in sections 7(6)(b) and 8(5)(b), references to the Secretary of State were to the GEMA;
  - (c) in section 7B(4)(c), the reference to the GEMA included a reference to the Secretary of State, but only for the purpose of enabling the inclusion of conditions requiring the rendering of a payment on the grant of a licence;
  - (d) section 7B(9) also required a copy of the licence to be sent to the GEMA.
- (6) When granting or extending a gas transporter licence by virtue of this section, the Secretary of State must have regard to—
- (a) costs, expenditure or liabilities of any description that the designated person may reasonably be expected to incur in carrying out its activities;
  - (b) the need to secure that the designated person is able to finance its activities;
  - (c) the need to secure that the designated person has appropriate incentives in relation to the carrying on of its activities;
  - (d) such other matters as the Secretary of State considers appropriate.
- (7) References in subsection (6) to a designated person’s activities are to the person’s activities for the purposes of—
- (a) the designated project to which the grant or extension relates, and
  - (b) in the case of an extension, any other designated project already authorised by the person’s gas transporter licence.
- (8) A gas transporter licence granted, extended or restricted by the Secretary of State by virtue of this section has effect for all purposes as if it had been granted, extended or restricted by the GEMA.

### **135 Applications for grant etc of gas transporter licence**

- (1) The Secretary of State may by regulations make provision about the making, consideration and determination of relevant applications, including provision—
- (a) about the person to whom a relevant application must be made;
  - (b) about the form and manner in which a relevant application must be made;
  - (c) imposing timing requirements in relation to the making of a relevant application;



- (d) requiring a relevant application to be accompanied by such information and documents as may be specified in the regulations;
  - (e) requiring a relevant application to be accompanied by such fee (if any) as may be –
    - (i) specified in the regulations, or
    - (ii) determined, by the person to whom the application is made, in accordance with the regulations;
  - (f) about the matters to be taken into account in determining a relevant application;
  - (g) requiring a determination to be accompanied by reasons;
  - (h) requiring determinations to be published;
  - (i) conferring functions on the Secretary of State or the GEMA (including functions involving the exercise of a discretion);
  - (j) for anything falling to be determined under the regulations to be determined –
    - (i) by the Secretary of State, the GEMA or another person specified in the regulations, and
    - (ii) in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be so specified.
- (2) “Relevant application” means an application within any of the following paragraphs (whether made to the Secretary of State or the GEMA) –
- (a) an application by a designated person for the grant of a gas transporter licence that authorises the conveyance of hydrogen through pipes for the purposes of the person’s designated project;
  - (b) an application by a designated person for the extension of a gas transporter licence held by the person so that it authorises the conveyance of hydrogen through pipes for the purposes of the person’s designated project;
  - (c) an application by a person who is or has been designated for the restriction of a gas transporter licence held by the person, in connection with the person’s designation in relation to a hydrogen pipeline project ceasing to have effect.
- (3) Provision made by virtue of subsection (1)(j)(ii) may in particular be made by reference to a document as amended from time to time.
- (4) Regulations under this section –
- (a) may provide for cases in which an application is not required;
  - (b) may provide for a relevant application that has been rejected by one person to be dealt with afresh by another person.
- (5) Before making regulations under this section, the Secretary of State must consult the GEMA.

- (6) Section 7B(1) to (2A) of the Gas Act 1986 does not apply to an application for the grant, extension or restriction of a gas transporter licence so far as the application is one to which regulations under this section apply.
- (7) Any sums received by the Secretary of State or the GEMA by virtue of this section are to be paid into the Consolidated Fund.
- (8) Regulations under this section are subject to the negative procedure.
- (9) For the purposes of section 5A(1) to (10) of the Utilities Act 2000 (duty of the GEMA to carry out impact assessment), a function exercisable by the GEMA by virtue of regulations under this section is to be treated as if it were a function exercisable by it under or by virtue of Part 1 of the Gas Act 1986.

*Modification of gas transporter licence*

**136 Modification of gas transporter licence by Secretary of State**

- (1) The Secretary of State may modify –
  - (a) the conditions of a designated person’s gas transporter licence;
  - (b) the terms of a designated person’s gas transporter licence;
  - (c) the standard conditions incorporated in gas transporter licences by virtue of section 8 of the Gas Act 1986;
  - (d) a document maintained in accordance with the conditions of licences of a relevant type or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power under subsection (1) only for the purpose of –
  - (a) facilitating or supporting the financing of the design, construction, commissioning or operation of a hydrogen pipeline project (or of hydrogen pipeline projects generally), or
  - (b) promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).
- (3) When making modifications under subsection (1)(a) or (b), the Secretary of State must have regard to –
  - (a) the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets);
  - (b) the interests of existing and future consumers of gas conveyed through pipes, including their interests in relation to the cost and security of supply of gas;
  - (c) costs, expenditure or liabilities of any description that the designated person may reasonably be expected to incur in carrying out its activities;
  - (d) the need to secure that the designated person is able to finance its activities;
  - (e) the need to secure that the designated person has appropriate incentives in relation to the carrying on of its activities;

- (f) such other matters as the Secretary of State considers appropriate.
- In paragraph (b), “gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act).
- (4) The Secretary of State may modify the conditions or terms of a gas transporter licence held by a person who is or was a designated person in connection with the revocation of the person’s designation in relation to a hydrogen pipeline project.
- (5) For the purposes of subsection (1), each of the following is a relevant type of licence –
- (a) a gas transporter licence;
  - (b) a licence under section 7A(1) of the Gas Act 1986 (gas supply licence);
  - (c) a licence under section 7AA of that Act (gas system planner licence);
  - (d) a licence under section 7AC of that Act (code manager licence).
- (6) References in this section to a designated person’s activities are to the person’s activities for the purposes of –
- (a) the designated project to which the modification relates, and
  - (b) any other designated project authorised by the person’s gas transporter licence.

### **137 Scope of modification powers under section 136**

- (1) Modifications made under section 136(1)(a) may include, for example, provision –
- (a) about the revenue that the designated person may receive in respect of its activities (its “allowed revenue”);
  - (b) about how the designated person’s allowed revenue is to be calculated;
  - (c) about the amounts that the designated person is entitled to receive, or is required to pay, under any hydrogen transport revenue support contract (within the meaning of Chapter 1 of Part 2) to which it is a party;
  - (d) about activities that the designated person must, may or may not carry on;
  - (e) about the management of the designated person’s activities, including the manner in which they are carried out;
  - (f) conferring functions on the GEMA, including provision enabling or requiring the designated person to refer for determination, decision or approval by the GEMA matters specified, or of a description specified, in the licence;
  - (g) for the amendment of the licence for the purpose of implementing a determination or decision of the GEMA or the Competition and Markets Authority;
  - (h) requiring the designated person to comply with any direction or instruction, or to have regard to any guidance, given by the GEMA

- in relation to matters specified, or of a description specified, in the licence;
- (i) requiring the designated person to co-operate with the GEMA and to provide such information and assistance to the GEMA as it may require for the purposes of carrying out any of its functions;
  - (j) about the payment by the designated person, to the GEMA or to the Competition and Markets Authority, of such amounts as may be determined by or in accordance with the licence;
  - (k) about the disclosure or publication of information by the designated person.
- (2) Modifications made under section 136(1)(b) may include, for example, provision about the circumstances in which a licence may be revoked or suspended.
  - (3) The powers under section 136(1) and (4) to “modify” include the power to amend, add to or remove; and references to modification in section 136, this section and section 138 are to be construed accordingly.
  - (4) The powers conferred by section 136(1) and (4) –
    - (a) may be exercised generally, only in relation to specified cases, or subject to exceptions (including by making provision for a case to be excepted only so long as specified conditions are satisfied);
    - (b) may be exercised differently for different purposes or areas;
    - (c) include power to make incidental, supplementary, consequential or transitional modifications.
  - (5) Provision included in a gas transporter licence, or in a document or agreement described in section 136(1)(d), by virtue of section 136 –
    - (a) need not relate to the activities authorised by the licence;
    - (b) may do anything authorised for gas transporter licences by section 7B(4A), (5)(a), (6) or (7) of the Gas Act 1986.
  - (6) The modification under section 136(1) or (4) of part of a standard condition of a gas transporter 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.
  - (7) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences), after “section 89” (as inserted by section 91(13) of this Act) insert “, section 136(1) or (4)”.
  - (8) References in this section to a designated person’s activities are to the person’s activities for the purposes of –
    - (a) the designated project to which the modification relates, and
    - (b) any other designated project authorised by the person’s gas transporter licence.

### **138 Procedure etc relating to modifications under section 136**

- (1) Before making a modification under section 136(1) or (4), the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) If under section 136(1) the Secretary of State modifies the standard conditions of a gas transporter licence, the GEMA must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in gas transporter licences granted after that time, and
  - (b) publish the modification.
- (3) The Secretary of State must publish details of any modifications made under section 136(1) and (4) as soon as reasonably practicable after they are made.
- (4) The Secretary of State may exclude from publication under subsection (3) any material the disclosure or publication of which the Secretary of State considers—
  - (a) would be likely to prejudice the commercial interests of any person, or
  - (b) would be contrary to the interests of national security.

#### *Information*

### **139 Information and advice**

- (1) The Secretary of State may by regulations make provision about the provision and publication of information and advice in connection with the carrying out of functions of any person under or by virtue of this Part.
- (2) The provision that may be made by virtue of subsection (1) includes provision—
  - (a) for the Secretary of State to require the GEMA to provide information to a hydrogen transport counterparty or any other specified person;
  - (b) for a hydrogen transport counterparty to require the GEMA to provide information to it;
  - (c) for the Secretary of State to require a designated person, a hydrogen transport counterparty or any other specified person to provide information to the GEMA;
  - (d) for the GEMA to require a designated person, a hydrogen transport counterparty or any other specified person to provide information to the GEMA;
  - (e) for the Secretary of State to require a designated person, a hydrogen transport counterparty, the GEMA or any other specified person to

- provide information or advice to the Secretary of State or any other specified person;
- (f) for the classification and protection of confidential or sensitive information;
  - (g) for the enforcement of any requirement imposed by virtue of any of paragraphs (a) to (f).
- (3) Section 105(1) of the Utilities Act 2000 (general restrictions on disclosure of information) does not apply to a disclosure required by virtue of this section.
  - (4) The first regulations under this section are subject to the affirmative procedure.
  - (5) Any other regulations under this section are subject to the negative procedure.
  - (6) In this section –
    - “designated person” includes a person who has been a designated person;
    - “hydrogen transport counterparty” has the same meaning as in Chapter 1 of Part 2 (see section 56);
    - “specified person” means a person specified, or of a description specified, in regulations under this section.
  - (7) See also section 34(4) of the Gas Act 1986 (general duty for the GEMA to give information, advice and assistance to the Secretary of State or the Competition and Markets Authority).

*Conditions of gas transporter licences*

**140 Conditions of gas transporter licences for conveyance of hydrogen**

- (1) For the purposes of this section, “relevant licence” means a gas transporter licence so far as it authorises a person to convey hydrogen through pipes in connection with the carrying on of a hydrogen pipeline project.
- (2) Without prejudice to the generality of section 7B(4)(a) of the Gas Act 1986 (conditions of licences), conditions described in subsection (3) may be included in a relevant licence in respect of circumstances where a person other than the licence holder (“the candidate”) –
  - (a) has applied for, or is considering whether to apply for, a relevant licence, or
  - (b) is considering whether to apply for financial support for activities relating to the production, transportation, storage or use of hydrogen.
- (3) The conditions referred to in subsection (2) are conditions that require the licence holder to comply with a direction given by the Secretary of State or the GEMA requiring the holder to provide to the candidate –
  - (a) information in relation to the activities authorised by the licence, and
  - (b) any other assistance that the candidate may reasonably require for the purpose of determining whether to –
    - (i) apply for a relevant licence, or

- (ii) apply for financial support as mentioned in subsection (2)(b).
- (4) A person (“P”) may not under section 8(3) of the Gas Act 1986 modify a condition of a relevant licence unless P is of the opinion that the modification is such that—
  - (a) the licence holder would not be unduly disadvantaged in competing with one or more other holders of relevant licences, and
  - (b) no other holder of a relevant licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the relevant licence to be modified).

*Other*

**141 Secretary of State directions to the GEMA**

- (1) In exercising any functions it has in relation to relevant gas transporter licences, the GEMA must comply with general or particular directions given to it by the Secretary of State for the purpose of promoting value for money in connection with a hydrogen pipeline project (or in connection with hydrogen pipeline projects generally).
- (2) In subsection (1), “relevant gas transporter licence” means a gas transporter licence, held by a designated person, that authorises the conveyance of hydrogen through pipes in connection with the person’s designated project.

**142 Repeal of Part 3**

- (1) The Secretary of State may by regulations repeal any of the preceding provisions of this Part.
- (2) So far as any of those provisions is still in force on a relevant date, the Secretary of State must—
  - (a) consider whether it is appropriate to repeal that provision, and
  - (b) if satisfied that it is not appropriate to do so, publish a statement no later than 3 months after that date explaining why not.
- (3) “Relevant date” in subsection (2) means 31 December 2040 and each five-year anniversary of that date.
- (4) Regulations under this section are subject to the affirmative procedure.

## PART 4

### NEW TECHNOLOGY

#### CHAPTER 1

##### LOW-CARBON HEAT SCHEMES

#### **143 Low-carbon heat schemes**

- (1) The Secretary of State may by regulations make provision for the establishment and operation of one or more low-carbon heat schemes.
- (2) A “low-carbon heat scheme” is a scheme for encouraging the supply or installation in the United Kingdom of relevant heating appliances through the imposition of low-carbon heat targets on persons to whom the scheme applies.
- (3) In this Chapter –
  - “low-carbon heat target” means a target imposed by or under scheme regulations;
  - “relevant heating appliance” means –
    - (a) a heating appliance that generates heat but is incapable of burning fossil fuels or peat to do so, or
    - (b) a heating appliance that generates heat by burning fossil fuels or peat, but does so only as part of a wider system to supplement heat from air, water or the ground.
- (4) In the definition of “relevant heating appliance” in subsection (3), “fossil fuel” means –
  - (a) coal,
  - (b) lignite,
  - (c) natural gas (within the meaning of the Energy Act 1976),
  - (d) crude liquid petroleum,
  - (e) petroleum products (within the meaning of that Act), or
  - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e).
- (5) The provision made by sections 144 to 150 is without prejudice to the generality of subsection (1).
- (6) In this Chapter, “scheme regulations” means regulations under subsection (1).

#### **144 Application of scheme**

- (1) Scheme regulations that provide for the establishment of a low-carbon heat scheme must identify –
  - (a) the descriptions of person to whom the scheme applies;



- (b) the kinds of relevant heating appliance to which the scheme applies.
- (2) A person within a description identified by virtue of subsection (1)(a) is referred to in this Chapter as a “scheme participant”.
- (3) Scheme regulations may –
  - (a) set low-carbon heat targets, or
  - (b) provide for low-carbon heat targets to be set in accordance with provision made by the regulations.Section 145 contains further provision about the setting of targets.
- (4) Scheme regulations must make provision about the period or periods in relation to which low-carbon heat targets have effect.
- (5) The provision that may be made by virtue of subsection (4) includes –
  - (a) provision authorising things done by a scheme participant before the first period in relation to which a low-carbon heat target has effect to be treated as done by the scheme participant during that period;
  - (b) provision authorising things done by a scheme participant during one period in relation to which a low-carbon-heat target has effect to be treated instead as done by the scheme participant during a different period in relation to which such a target has effect.

#### **145 Setting of targets etc**

- (1) A low-carbon heat target may be set in whatever way, and by reference to whatever criteria, the Secretary of State considers appropriate, and may for example be set –
  - (a) by reference to the carrying on of specified activities;
  - (b) as a proportion of the activities of a scheme participant that must relate to relevant heating appliances;
  - (c) by reference to the average level of energy efficiency (determined in accordance with scheme regulations) to be achieved in relation to heating appliances, or specified descriptions of heating appliances, supplied or installed by a scheme participant;
  - (d) by reference to the average carbon intensity of heat generation (determined in accordance with scheme regulations) of heating appliances, or specified descriptions of heating appliances, supplied or installed by a scheme participant;
  - (e) where a scheme participant manufactures heating appliances, by specifying what proportion of those heating appliances, or of specified heating appliances, that are supplied or installed (whether or not by the scheme participant) must be relevant heating appliances.
- (2) The power to specify an activity by virtue of subsection (1)(a) includes power to specify circumstances or conditions relating to the carrying out of the activity.

- (3) In the case of a low-carbon heat target that is imposed by virtue of subsection (1)(c) or (d) on a scheme participant who manufactures heating appliances, the target may be set by reference to heating appliances that are supplied or installed (whether or not by the scheme participant).
- (4) Scheme regulations may confer a discretion on the Secretary of State or any other person in connection with the setting of low-carbon heat targets.
- (5) The reference in subsection (1)(d) to the carbon intensity of heat generation, in relation to an appliance, is a reference to the level of greenhouse gas emissions per unit of heat generated by the appliance.  
“Greenhouse gas emissions” means emissions of any greenhouse gas within the meaning of section 92(1) of the Climate Change Act 2008.
- (6) Scheme regulations may provide—
  - (a) for different weight to be given to different kinds of appliance or different activities;
  - (b) for low-carbon heat targets to be set at different levels for different kinds of appliance or different activities.
- (7) Scheme regulations may provide for specified activities to count towards the meeting of a low-carbon heat target.
- (8) In this section, “specified” means specified in scheme regulations.

#### **146 Further provision about scheme regulations**

- (1) Scheme regulations must provide for the making of determinations as to whether a scheme participant has met a low-carbon heat target imposed on the scheme participant.
- (2) Scheme regulations may make provision for monitoring the operation of a low-carbon heat scheme, and may in particular make provision about—
  - (a) the keeping of records by scheme participants and others;
  - (b) the provision of information by scheme participants and others;
  - (c) the audit and verification of information provided by scheme participants and others.
- (3) Scheme regulations may make provision—
  - (a) enabling scheme participants to pool or transfer low-carbon heat targets imposed on them;
  - (b) for the issuing of certificates representing activities or appliances to which a low-carbon heat target relates;
  - (c) enabling scheme participants to acquire certificates mentioned in paragraph (b) for the purpose of meeting a low-carbon heat target;
  - (d) about the keeping of records in relation to—
    - (i) the pooling or transfer of low-carbon heat targets;
    - (ii) the acquisition of certificates.
- (4) Scheme regulations may make provision—

- (a) requiring a scheme participant who fails to meet a low-carbon heat target to make a payment, before a specified deadline, of an amount specified by or determined in accordance with the regulations;
  - (b) for a payment mentioned in paragraph (a) to be made to the administrator (see section 147) or to such other person as the regulations may specify;
  - (c) for a person who fails to meet a low-carbon heat target to be subject to such consequences (instead of or in addition to a requirement mentioned in paragraph (a)) as may be specified;
  - (d) about how liability to make a payment, or to other consequences, is to be determined where low-carbon heat targets have been pooled or transferred by virtue of provision made under subsection (3)(a).
- (5) In subsection (4), “specified” means specified in scheme regulations.

#### **147 Administration of scheme**

- (1) Scheme regulations may provide for the appointment of a person as the administrator of a low-carbon heat scheme.
- (2) Scheme regulations –
  - (a) may confer functions on the administrator for the purposes of the scheme;
  - (b) may authorise the administrator to arrange for another person to carry out any functions of the administrator.
- (3) The functions that may be conferred on the administrator by virtue of subsection (2) include, for example, functions in connection with –
  - (a) setting low-carbon heat targets;
  - (b) determining whether low-carbon heat targets have been met;
  - (c) obtaining information;
  - (d) keeping records;
  - (e) requiring scheme participants to make payments to the administrator in connection with the costs of operating the scheme.
- (4) Only the following may be appointed as the administrator of a low-carbon heat scheme –
  - (a) the Secretary of State;
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) the Department for the Economy in Northern Ireland;
  - (e) a public authority (other than a person within any of paragraphs (a) to (d));
  - (f) any combination of the above.
- (5) More than one person may be appointed as the administrator of a low-carbon heat scheme.

- (6) Scheme regulations that appoint a public authority as the administrator of a low-carbon heat scheme may make such amendments to primary legislation as the Secretary of State considers appropriate for the purpose of enabling the authority to carry out the functions conferred on it by the regulations.
- (7) In this section, “public authority” means a person with functions of a public nature.

#### **148 Enforcement, penalties and offences**

- (1) Scheme regulations may authorise the administrator of a low-carbon heat scheme –
  - (a) to require the production of documents or the provision of information;
  - (b) to question the officers of a company or other individuals;
  - (c) to enter premises with a warrant;
  - (d) to seize documents or records.
- (2) Scheme regulations may authorise the administrator of a low-carbon heat scheme, in circumstances specified in the regulations –
  - (a) to treat activities of a person (A) as activities of a different person (B) for the purposes of the scheme, and
  - (b) to treat a low-carbon heat target imposed on A as if it had been imposed on B.
- (3) Scheme regulations may provide that a person is liable to one or more penalties in respect of a failure to comply with a requirement imposed on the person by or under a low-carbon heat scheme.
- (4) Where by virtue of subsection (3) scheme regulations provide that a person is liable to a financial penalty, the regulations –
  - (a) may specify the amount of the penalty or provide for the amount of the penalty to be determined in accordance with the regulations;
  - (b) must provide for the penalty to be paid to the administrator or to such other person as the regulations may specify.
- (5) Scheme regulations may create offences for failure to comply with a requirement imposed by or under a low-carbon heat scheme.
- (6) Scheme regulations made by virtue of subsection (5) may provide for an offence created by the regulations to be triable –
  - (a) only summarily, or
  - (b) either summarily or on indictment.
- (7) Scheme regulations made by virtue of subsection (5) may provide for an offence created by the regulations to be punishable with a fine.

#### **149 Application of sums paid by virtue of section 146(4) or 148(3)**

- (1) Scheme regulations may make provision about the application of amounts paid by virtue of section 146(4)(a) or 148(3).

- (2) Provision made by virtue of subsection (1) may require the payment of amounts into the Consolidated Fund.

## 150 Appeals

- (1) Scheme regulations that, by virtue of section 148(3), provide that a person is liable to a financial penalty must also provide for a person to have a right of appeal to a court or tribunal against the imposition of the penalty.
- (2) Scheme regulations may make provision about appeals against –
  - (a) decisions made by the administrator of a low-carbon heat scheme, and
  - (b) penalties imposed (other than financial penalties) or enforcement action taken for failure to comply with a requirement imposed by or under a low-carbon heat scheme.
- (3) Scheme regulations that make provision by virtue of subsection (2) must specify the court, tribunal or person who is to hear and determine an appeal made by virtue of that subsection.

## 151 Scheme regulations: procedure etc

- (1) Scheme regulations are subject to the negative procedure unless subsection (2) applies, in which case they are subject to the affirmative procedure.
- (2) This subsection applies if scheme regulations –
  - (a) establish a low-carbon heat scheme;
  - (b) extend the descriptions of person, or the kinds of relevant heating appliance, to which a low-carbon heat scheme applies;
  - (c) provide for new penalties;
  - (d) increase the amount of existing financial penalties by more than is necessary to reflect changes in the value of money;
  - (e) create an offence or increase the fine for an existing offence;
  - (f) confer new powers to enforce requirements imposed by or under a low-carbon heat scheme;
  - (g) amend primary legislation.
- (3) Scheme regulations may create exceptions to any requirement imposed by the regulations.
- (4) Before making scheme regulations that apply in relation to Scotland, Wales or Northern Ireland, the Secretary of State must give notice –
  - (a) stating that the Secretary of State proposes to make scheme regulations,
  - (b) setting out or describing the provisions of the regulations that apply in relation to Scotland, Wales or Northern Ireland, and
  - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to those provisions,and must consider any representations duly made and not withdrawn.

- (5) A notice under subsection (4) must be given to each relevant devolved authority, that is to say –
- (a) the Scottish Ministers, so far as the regulations apply in relation to Scotland;
  - (b) the Welsh Ministers, so far as the regulations apply in relation to Wales;
  - (c) the Department for the Economy in Northern Ireland, so far as the regulations apply in relation to Northern Ireland.
- (6) The Secretary of State need not wait until the end of the period specified under subsection (4)(c) before making regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provisions referred to in subsection (4)(b).
- (7) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provisions referred to in subsection (4)(b) have been taken into account in the regulations.

## **152 Interpretation of Chapter 1**

In this Chapter –

“low-carbon heat scheme” has the meaning given by section 143(2);

“low-carbon heat target” has the meaning given by section 143(3);

“primary legislation” means –

- (a) an Act,
- (b) an Act of the Scottish Parliament,
- (c) a Measure or Act of Senedd Cymru, or
- (d) Northern Ireland legislation;

“relevant heating appliance” has the meaning given by section 143(3);

“scheme participant” has the meaning given by section 144(2);

“scheme regulations” has the meaning given by section 143(6).

## **CHAPTER 2**

### HYDROGEN GRID CONVERSION TRIALS

## **153 Modifications of the gas code**

- (1) For the purposes of this section, “hydrogen grid conversion trial” means a scheme designated by the Secretary of State that –
- (a) relates to a particular place or area (the “trial location”),
  - (b) is designed to gather evidence for the purpose of enabling assessments to be made about the feasibility, costs and benefits of using hydrogen for heating or cooking,

- (c) requires the network for supplying gas to the trial location to be modified so as to enable the supply of hydrogen, and
  - (d) is intended to have effect for a definite period.
- (2) Schedule 2B to the Gas Act 1986 (the gas code) applies in relation to a hydrogen grid conversion trial—
  - (a) as if references to a gas transporter included a person (other than a gas transporter) who is conducting the trial, and
  - (b) as if it were modified in accordance with subsections (3) to (5).
- (3) Paragraph 16 (alterations etc of burners on change of calorific value) applies as if—
  - (a) in sub-paragraph (1), the words “at a rate not exceeding 75,000 therms a year” were omitted, and
  - (b) in sub-paragraph (2), the steps required to be taken in respect of premises in the trial location also included any works required in respect of the premises (other than works already mentioned in sub-paragraph (2)) for the purposes or in consequence of the trial.
- (4) Paragraph 23 (entry of premises during supply) applies as if the power conferred by sub-paragraph (1)(a) included power to enter premises in the trial location for the purpose of inspecting anything on the premises, or carrying out any tests on the premises, in preparation for or otherwise in connection with the trial.
- (5) Paragraph 24 (entry of premises to discontinue supply) applies as if the power conferred by sub-paragraph (2) were exercisable for the purposes of the trial—
  - (a) in relation to any premises in the trial location, and
  - (b) notwithstanding sub-paragraph (1).
- (6) For the purposes of the application of the Rights of Entry (Gas and Electricity Boards) Act 1954 in relation to a relevant power of entry (see paragraph 28(5) of Schedule 2B to the Gas Act 1986), the reference in section 1(2) of the 1954 Act to a gas operator includes a reference to a person (other than a gas transporter) who is conducting a hydrogen grid conversion trial.
- (7) In subsection (6), “relevant power of entry” means a power of entry conferred by Schedule 2B to the Gas Act 1986, as it applies by virtue of this section in relation to a hydrogen grid conversion trial.

#### **154 Regulations for protection of consumers**

- (1) The Secretary of State may by regulations make provision—
  - (a) requiring a gas transporter to take specified steps to secure that consumers in a trial location are properly informed about a hydrogen grid conversion trial being conducted in the trial location;
  - (b) requiring a gas transporter to take specified steps to secure that consumers are given adequate warning of the need for their premises to be disconnected for the purposes of a hydrogen grid conversion trial;

- (c) about the enforcement of requirements imposed by virtue of paragraph (a) or (b).
- (2) Regulations under subsection (1) may confer functions on gas transporters in connection with the discharge of requirements imposed by the regulations.
- (3) The provision that may be made by virtue of subsection (1)(c) includes provision for the imposition of civil penalties in respect of a failure to comply with a requirement imposed by the regulations (but does not include provision for the creation of a criminal offence).
- (4) The Secretary of State may by regulations make provision designed to secure protection for consumers and other people who are affected, or likely to be affected, by a hydrogen grid conversion trial.
- (5) The provision that may be made by regulations under subsection (4) includes, for example, provision—
  - (a) about the making of complaints about the exercise by a gas transporter of a power conferred by a relevant statutory provision;
  - (b) about the award of redress in specified circumstances;
  - (c) imposing requirements on gas transporters or other persons to provide information to consumers and others;
  - (d) for securing that consumers and others are not required to incur expenditure, or are not otherwise financially disadvantaged, as a result of a hydrogen grid conversion trial;
  - (e) for securing fair treatment of consumers and others before, during and after a hydrogen grid conversion trial;
  - (f) about the quality of products provided to consumers and others and the quality of works carried out on premises owned by consumers and others;
  - (g) about the enforcement of requirements imposed by the regulations on gas transporters or other persons.
- (6) The provision that may be made by virtue of subsection (5)(g) includes provision for the imposition of civil penalties in respect of a failure to comply with a requirement imposed by the regulations (but does not include provision for the creation of a criminal offence).
- (7) Where regulations under this section make provision for a civil penalty, they must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (8) Regulations under this section are subject to the negative procedure.
- (9) In this section—
  - “consumer” and “disconnected” have the same meaning as in Schedule 2B to the Gas Act 1986 (see paragraph 1(1) of that Schedule);
  - “gas transporter” means—
    - (a) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (see section 7 of that Act), or



- (b) any other person who—
    - (i) is conducting a hydrogen grid conversion trial, and
    - (ii) does not require a licence under section 7 of the Gas Act 1986 as a result of an exemption under section 6A of that Act;
- “hydrogen grid conversion trial” and “trial location” have the same meaning as in section 153;
- “specified” means specified by regulations.

### CHAPTER 3

#### MISCELLANEOUS

##### *Hydrogen*

#### **155 Power to modify Gas Act 1986 in relation to hydrogen**

- (1) The Secretary of State may by regulations provide for any provision of the Gas Act 1986—
  - (a) not to apply, or
  - (b) to apply with modifications specified in the regulations,in relation to the production, transportation, storage or use of hydrogen.
- (2) The power under subsection (1) may be exercised by amending the Gas Act 1986.
- (3) The power under subsection (1) may be exercised only for the purpose of facilitating or promoting the production, transportation, storage or use of hydrogen.
- (4) Before exercising the power under subsection (1), the Secretary of State must consult—
  - (a) the GEMA, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.

##### *Fusion energy*

#### **156 Fusion energy facilities: nuclear site licence not required**

- (1) Section 1 of the Nuclear Installations Act 1965 (restriction of certain nuclear installations to licensed sites) is amended as follows.
- (2) After subsection (2) insert—
  - “(2A) Subsection (1) does not apply to a fusion energy facility.
  - (2B) In subsection (2A), “fusion energy facility” means a site that is—

- (a) used for the purpose of installing or operating any plant designed or adapted for the production of electrical energy or heat by fusion, and
- (b) not also used for the purpose of installing or operating a nuclear reactor.”

*Renewable and sustainable fuel*

**157 Treatment of recycled carbon fuel and nuclear-derived fuel as renewable transport fuel**

After section 131C of the Energy Act 2004 insert –

**“131D Recycled carbon fuel and nuclear-derived fuel**

- (1) An RTF order may –
  - (a) designate as recycled carbon fuel a description of liquid or gaseous fuel which is produced wholly from waste derived from a fossil source of energy;
  - (b) designate as nuclear-derived fuel a description of liquid or gaseous fuel which is produced wholly using, or by a process powered wholly by, nuclear fuel.
- (2) Where a designation under subsection (1) is in force, the recycled carbon fuel or nuclear-derived fuel is to be treated for the purposes of this Chapter and any RTF order as renewable transport fuel.”

**158 Revenue certainty scheme for sustainable aviation fuel producers: consultation and report**

- (1) The Secretary of State must carry out a public consultation on the options for designing and implementing a sustainable aviation fuel revenue certainty scheme.
- (2) A “sustainable aviation fuel revenue certainty scheme” is a scheme whose purpose is to give producers of sustainable aviation fuel greater certainty than they otherwise would have about the revenue that they will earn from sustainable aviation fuel that they produce.
- (3) The Secretary of State must open the consultation within the period of 6 months beginning with the day on which this Act is passed.
- (4) The Secretary of State must bring the consultation to the attention of, in particular, such of each of the following as the Secretary of State considers appropriate –
  - (a) producers of sustainable aviation fuel;
  - (b) suppliers of sustainable aviation fuel;
  - (c) airlines.

- (5) The Secretary of State must, within the period of 18 months beginning with the day on which this Act is passed, lay before Parliament a report on progress made towards the development of a sustainable aviation fuel revenue certainty scheme.
- (6) In this section, “sustainable aviation fuel” means aviation turbine fuel whose use (as compared with the use of other aviation turbine fuel) will, in the opinion of the Secretary of State, contribute to a reduction in emissions of greenhouse gases; and for this purpose –
  - “aviation turbine fuel” has the meaning given by article 3(1B) of the Renewable Transport Fuel Obligations Order 2007 (S.I. 2007/3072);
  - “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008.

### 159 Renewable liquid heating fuel obligations

- (1) The Secretary of State may by regulations subject off-grid heating fuel suppliers (or off-grid heating fuel suppliers of a particular description) to an obligation in respect of renewable liquid heating fuel that corresponds to or is similar to the obligation mentioned in section 124(2) of the Energy Act 2004 (renewable transport fuel obligation).
- (2) The regulations may, for any purpose connected with that obligation, make provision corresponding to or similar to any provision made by, or that may be made under, Chapter 5 of Part 2 of the Energy Act 2004 (powers etc relating to renewable transport fuel obligation).
- (3) Before making regulations under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) Regulations under this section are subject to the affirmative procedure.
- (5) In this section –
  - “off-grid heating fuel supplier” means a person who, in the course of business, supplies any –
    - (a) renewable liquid heating fuel,
    - (b) fossil fuel, or
    - (c) other fuel, apart from solid fuel,at or for delivery to places in Great Britain with a view to its being used wholly or mainly for the purpose of heating buildings to which there is no mains gas supply;
  - “renewable liquid heating fuel” means fuel that is typically supplied or stored in a liquid state and that is –
    - (a) biofuel or blended biofuel, or
    - (b) fuel (other than fossil fuel or nuclear fuel) produced –
      - (i) wholly by energy from a renewable source, or
      - (ii) wholly by a process powered wholly by such energy;and “biofuel”, “blended biofuel”, “fossil fuel” and “renewable source” have the meanings given in section 132 of the Energy Act 2004.

*Removals of greenhouse gases***160 Climate Change Act 2008: meaning of “UK removals”**

In section 29(1)(b) of the Climate Change Act 2008 (UK emissions and removals of greenhouse gases), for “land use, land-use change or forestry” substitute “processes, mechanisms or”.

**PART 5**

## INDEPENDENT SYSTEM OPERATOR AND PLANNER

*Independent System Operator and Planner: functions and designation***161 The Independent System Operator and Planner (“the ISOP”)**

- (1) This Part contains provision about the Independent System Operator and Planner (referred to in this Part as “the ISOP”).
- (2) The functions of the ISOP include—
  - (a) functions conferred by or by virtue of this Act, which include functions relating to the matters mentioned in subsection (3), and
  - (b) whatever other functions are conferred on the ISOP by or by virtue of any enactment other than one contained in this Act.
- (3) The matters referred to in subsection (2)(a) are—
  - (a) co-ordinating and directing the flow of electricity onto and over transmission systems;
  - (b) making and administering arrangements for the provision of services for the purpose of facilitating the co-ordination of the flow of electricity onto and over transmission systems;
  - (c) carrying out strategic planning and forecasting in connection with—
    - (i) the development of transmission systems,
    - (ii) the provision of services referred to in paragraph (b), and
    - (iii) other arrangements relating to the conveyance or supply of electricity;
  - (d) carrying out strategic planning and forecasting in connection with—
    - (i) the development of pipe-line systems for the conveyance of gas, and
    - (ii) other arrangements relating to the conveyance or supply of gas;
  - (e) providing advice, analysis or information in relation to the matters mentioned in section 171(1).

**162 Designation etc**

- (1) The Secretary of State may by notice designate a person as the ISOP.

- (2) A notice under subsection (1) –
  - (a) must specify the time from which the designation has effect;
  - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.
- (3) The Secretary of State must ensure that a person is designated under subsection (1) at all times after a person is first designated (but at any time not more than one person may be designated).
- (4) The Secretary of State may by notice revoke a person’s designation under subsection (1).
- (5) A notice under subsection (4) –
  - (a) must specify the time from which the revocation has effect;
  - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.

*General duties*

**163 Duty to promote particular objectives**

- (1) The ISOP must carry out its functions in the way that it considers is best calculated to promote –
  - (a) the net zero objective;
  - (b) the security of supply objective;
  - (c) the efficiency and economy objective.
- (2) The net zero objective is the objective of enabling the Secretary of State to meet the duties imposed by –
  - (a) section 1 of the Climate Change Act 2008 (net UK carbon account target for 2050), and
  - (b) section 4(1)(b) of that Act (UK carbon account not to exceed carbon budget).
- (3) The security of supply objective is the objective of ensuring the security of supply, to existing and future consumers, of –
  - (a) electricity conveyed by distribution systems or transmission systems, and
  - (b) gas conveyed through pipes.
- (4) The efficiency and economy objective is the objective of promoting –
  - (a) efficient, co-ordinated and economical systems for the distribution and transmission of electricity and the conveyance of gas;
  - (b) efficiency (including the efficient use of energy) and economy on the part of persons who carry out relevant activities within subsection (5)(a), (b) or (c).
- (5) In this Part, “relevant activity” means any of the following, so far as carried out in the course of a business –

- 
- (a) an activity mentioned in section 5(1) of the Gas Act 1986 (gas transportation, interconnection, supply, shipping, system planning, smart meter communication, code management);
  - (b) an activity mentioned in section 4(1) of the Electricity Act 1989 (electricity generation, transmission, distribution, supply, interconnection, multi-purpose interconnection, system operation, smart meter communication, code management);
  - (c) an activity, other than an activity within paragraph (a) or (b), in respect of which the ISOP has functions;
  - (d) an activity, other than an activity within paragraph (a), (b) or (c), that is connected with—
    - (i) the production, conveyance, storage or supply of energy,
    - (ii) the reduction of UK emissions of targeted greenhouse gases arising from the production, conveyance, storage, supply or consumption of energy, or
    - (iii) data relating to any matter within sub-paragraph (i) or (ii), or to demand for or consumption of energy.
- (6) For the purposes of subsection (5)(d)—
- (a) “energy” means energy in any form and includes fuel or other substances used to produce energy;
  - (b) references to the production of energy include references to the conversion of energy from one form to another;
  - (c) references to the supply of energy include references to adjusting consumption of energy (whether generally, at particular times, or by particular persons);
  - (d) an activity referred to in paragraph (d)(i) is not a relevant activity when carried out in relation to products for human or animal consumption;
  - (e) “UK emissions of targeted greenhouse gases” are emissions of such gases as are, or are treated for the purposes of Part 1 of the Climate Change Act 2008 as, emissions from sources in the United Kingdom.
- (7) In this section, “targeted greenhouse gas” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).

#### **164 Duty to have regard to particular matters**

- (1) The ISOP must, when carrying out its functions, have regard to—
- (a) the need to facilitate competition between persons who carry out a relevant activity (except to the extent that such persons are, in accordance with or by virtue of an enactment, not subject to competition in relation to the activity);
  - (b) the consumer impact of a relevant activity;
  - (c) the whole-system impact of a relevant activity;
  - (d) the desirability of facilitating innovation in relation to the carrying out of relevant activities.

- (2) The reference in subsection (1)(b) to the consumer impact of a relevant activity is a reference to the impact (or likely impact) of—
  - (a) the behaviour of persons who carry out the activity on existing and future consumers, and
  - (b) the behaviour of existing and future consumers on the carrying out of the activity.
- (3) The reference in subsection (1)(c) to the whole-system impact of a relevant activity is a reference to the impact (or likely impact) of—
  - (a) the carrying out of the activity, and
  - (b) the behaviour of existing and future consumers in relation to the carrying out of the activity,in relation to the carrying out of other relevant activities.

### **165 Duty to have regard to strategy and policy statement**

- (1) The ISOP must, when carrying out its functions, have regard to the strategic priorities set out in the current strategy and policy statement.
- (2) The ISOP must give notice to the Secretary of State if at any time the ISOP concludes that a policy outcome contained in the current strategy and policy statement is not realistically achievable.
- (3) A notice under subsection (2) must include—
  - (a) the grounds on which the conclusion was reached;
  - (b) what (if anything) the ISOP is doing or proposes to do for the purpose of furthering the delivery of the outcome so far as reasonably practicable.
- (4) In this section—

“the current strategy and policy statement” means the statement for the time being designated under section 131(1) of the Energy Act 2013;

“policy outcome” and “strategic priorities” have the same meaning as in Part 5 of the Energy Act 2013 (see section 131(5) of that Act).
- (5) Part 5 of the Energy Act 2013 is amended as follows.
- (6) In section 131 (designation of strategy and policy statement)—
  - (a) in subsection (2)(c), after “Authority” insert “, the Independent System Operator and Planner”;
  - (b) in subsection (5), after the definition of “the 1986 Act” insert—

““Independent System Operator and Planner” means the person for the time being designated under section 162(1) of the Energy Act 2023;”.
- (7) Section 134 (review of strategy and policy statement) is amended as follows.

- (8) In subsection (4), after paragraph (b) insert –
- “(ba) the Independent System Operator and Planner has given notice to the Secretary of State under section 165(2) of the Energy Act 2023 since the relevant time.”
- (9) After subsection (5) insert –
- “(5A) The Secretary of State may also review the strategy and policy statement at any other time if the Secretary of State considers it appropriate to do so in preparation for or in connection with the designation of a person under section 162(1) of the Energy Act 2023 (Independent System Operator and Planner).”
- (10) In subsection (10), after paragraph (a) insert –
- “(aa) the Independent System Operator and Planner.”
- (11) In section 135(4) (procedural requirements in relation to strategy and policy statement), after paragraph (a) insert –
- “(aa) the Independent System Operator and Planner.”

### *Licences*

## **166 Licensing of electricity system operator activity**

- (1) Part 1 of the Electricity Act 1989 is amended as follows.
- (2) In section 4(1) (prohibition on unlicensed supply, transmission etc of electricity), after paragraph (c) insert –
- “(ca) co-ordinates and directs the flow of electricity onto and over transmission systems by means of which the transmission of electricity takes place;”.
- (3) Section 6 (licences authorising supply, etc) is amended as follows.
- (4) In subsection (1), after paragraph (d) insert –
- “(da) subject to subsections (1ZB) and (2ZA), a licence authorising a person to co-ordinate and direct the flow of electricity onto and over transmission systems by means of which the transmission of electricity takes place (“an electricity system operator licence”);”.
- (5) After subsection (1) insert –
- “(1ZA) Subject to subsection (2ZA), the Secretary of State may grant an electricity system operator licence.
- (1ZB) The first electricity system operator licence may only be granted by the Secretary of State.



- (1ZC) For the purposes of this section, references to the grant of an electricity system operator licence include the giving of a direction under section 167 of the Energy Act 2023 in respect of a transmission licence.”
- (6) After subsection (2) insert—
- “(2ZA) A person may not be granted an electricity system operator licence unless the same person—
- (a) already holds a licence granted under section 7AA of the Gas Act 1986, or
  - (b) is granted such a licence at the same time as the person is granted an electricity system operator licence.”
- (7) In subsection (2A), for “(d)” substitute “(da)”.
- (8) In subsection (8), after “term of the licence” insert “and subject to”.
- (9) After subsection (8) insert—
- “(8A) If a person who holds an electricity system operator licence ceases at any time to hold a licence under section 7AA of the Gas Act 1986, the person is to be treated as ceasing to hold the electricity system operator licence at the same time.”
- (10) In section 7A (transfer of licences), after subsection (11) insert—
- “(11ZA) An electricity system operator licence may not be transferred to a person unless a licence granted under section 7AA of the Gas Act 1986 is also transferred to the same person at the same time.”

**167 Direction for transmission licence to have effect as electricity system operator licence**

- (1) The Secretary of State may (instead of granting an electricity system operator licence) direct that a pre-commencement transmission licence is to have effect as an electricity system operator licence.
- (2) A direction under this section may provide that a licence that has effect by virtue of the direction includes such terms and conditions as are specified, or of a description specified, in the direction (regardless of whether or the extent to which those terms and conditions were included in the pre-commencement transmission licence).
- (3) A direction under this section may provide for the continued effect (in accordance with the direction) of rights, liabilities and obligations that have effect immediately before the relevant date in connection with—
- (a) a pre-commencement transmission licence,
  - (b) a document maintained in accordance with the conditions of such a licence, or
  - (c) an agreement that gives effect to such a document.

- (4) In subsection (3), “the relevant date” means the date on which the direction takes effect.
- (5) A direction under this section may make—
  - (a) incidental, consequential, supplementary and transitional provision;
  - (b) such amendments relating to the revocation of a pre-commencement transmission licence as the Secretary of State considers appropriate;
  - (c) different provision for different purposes.
- (6) Before giving a direction under this section, the Secretary of State must consult—
  - (a) the GEMA, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (7) Subsection (6) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (8) In this Part—
  - “electricity system operator licence” means a licence under section 6(1)(da) of the Electricity Act 1989 (as inserted by section 166);
  - “pre-commencement transmission licence” means a licence under section 6(1)(b) of the Electricity Act 1989 that is in force immediately before this section comes into force.

## 168 Licensing of gas system planning activity

- (1) The Gas Act 1986 is amended as follows.
- (2) In section 5 (prohibition on unlicensed activities), in subsection (1)—
  - (a) omit the “or” at the end of paragraph (c);
  - (b) after that paragraph insert—
    - “(ca) carries out planning and forecasting functions of the Independent System Operator and Planner;”;
  - (c) after subsection (10) insert—
    - “(10A) In subsection (5)(1)(ca), “planning and forecasting functions of the Independent System Operator and Planner” means functions that—
      - (a) are conferred by or by virtue of an enactment on a person who is designated under section 162(1) of the Energy Act 2023, and
      - (b) relate to strategic planning and forecasting in connection with the development of pipe-line systems operated by gas transporters for the conveyance of gas.”

(3) After section 7A insert—

**“7AA Licensing of a person carrying out gas system planner functions**

- (1) Subject to subsections (3) and (4), the Authority may grant a licence authorising a person to carry out planning and forecasting functions of the Independent System Operator and Planner (“a gas system planner licence”).
- (2) Subject to subsection (4), the Secretary of State may grant a gas system planner licence.
- (3) The first gas system planner licence may only be granted by the Secretary of State.
- (4) A person may not be granted a gas system planner licence unless either of the following paragraphs applies to the person—
  - (a) the person—
    - (i) already holds an electricity system operator licence, or
    - (ii) is treated as holding such a licence by virtue of a direction under section 167 of the Energy Act 2023;
  - (b) the person is granted an electricity system operator licence, or is treated by virtue of a direction under section 167 of the Energy Act 2023 as having been granted such a licence, at the same time as the person is granted a gas system planner licence.
- (5) In this section—

“electricity system operator licence” means a licence under section 6(1)(da) of the Electricity Act 1989;

“planning and forecasting functions of the Independent System Operator and Planner” has the meaning given by section 5(10A).”

(4) In section 7B (licences: general)—

- (a) in subsection (3), after “contained in it” insert “and subject to subsection (3A)”;
- (b) after subsection (3) insert—

“(3A) If a person who holds a gas system planner licence ceases at any time to hold a licence under section 6(1)(da) of the Electricity Act 1989, the person is to be treated as ceasing to hold the gas system planner licence at the same time.”

(5) In section 8AA (transfer of licences), after subsection (11) insert—

“(11ZA) A gas system planner licence may not be transferred to a person unless a licence granted under section 6(1)(da) of the Electricity Act 1989 is also transferred to the same person at the same time.”

**169 Modification of licences etc**

- (1) A relevant authority may modify –
  - (a) the conditions of a particular relevant licence;
  - (b) the standard conditions of relevant licences of a particular type;
  - (c) a relevant document.
- (2) A relevant authority may revoke a pre-commencement transmission licence where –
  - (a) the licence authorises the holder to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
  - (b) the first electricity system operator licence has been granted to a person.
- (3) A relevant authority may exercise the power under subsection (1) or (2) only –
  - (a) in preparation for the designation of a person under section 162(1), or
  - (b) in connection with or in consequence of the designation of a person under that provision.
- (4) A relevant authority may also exercise the power under subsection (1) where –
  - (a) the operation or management of a relevant document is affected by steps taken in connection with the designation of a person under section 162(1) or by the preparation for such a designation, and
  - (b) the authority considers it appropriate to exercise the power in connection with the operation or management of a relevant document.
- (5) The Secretary of State may direct the GEMA to exercise the power under subsection (1) or (2) if the Secretary of State considers it appropriate for the GEMA to exercise that power.
- (6) A relevant authority may not exercise the power under subsection (1) or (2) after the end of the period of 3 years beginning with the day on which the first designation under section 162(1) has effect.
- (7) In this section –
  - “pre-commencement transmission licence” has the same meaning as in section 167;
  - “relevant authority” means the Secretary of State or the GEMA;
  - “relevant document” means a document maintained in accordance with the conditions of a relevant licence.

**170 Procedure relating to modifications under section 169**

- (1) Before making a modification under section 169, a relevant authority must –
  - (a) publish a notice about the proposed modification,
  - (b) send a copy of the notice to the persons listed in subsection (2), and

- (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are—
- (a) each relevant licence holder;
  - (b) the GEMA (where the relevant authority is the Secretary of State) or the Secretary of State (where the relevant authority is the GEMA);
  - (c) the National Association of Citizens Advice Bureaux;
  - (d) the Scottish Association of Citizens Advice Bureaux;
  - (e) Consumer Scotland;
  - (f) the General Consumer Council for Northern Ireland, unless the relevant authority does not consider it appropriate for the Council to be sent a copy of the notice in a particular case;
  - (g) where the proposed modification relates to a licence for the purposes of section 5 of the Gas Act 1986, the Health and Safety Executive;
  - (h) such other persons as the relevant authority considers appropriate.
- (3) A notice under subsection (1) must—
- (a) state that the relevant authority proposes to make a modification;
  - (b) set out the proposed modification and its effect;
  - (c) specify the date from which the relevant authority proposes that the modification will have effect;
  - (d) state the reasons why the relevant authority proposes to make the modification.
- (4) If, after complying with subsections (1) to (3) in relation to a modification, the relevant authority decides to make the modification, it must publish a notice about the decision.
- (5) A notice under subsection (4) must—
- (a) state that the relevant authority has decided to make the modification;
  - (b) set out the modification and its effect;
  - (c) specify the date from which the modification has effect;
  - (d) state how the relevant authority has taken account of any representations made in the period specified in the notice under subsection (1);
  - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (6) A notice under this section about a modification or decision must be published in such manner as the relevant authority considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- (7) References in this section to the making of a modification, in relation to a relevant licence, include references to the revocation of the licence.
- (8) In this section, “relevant licence holder”—

- (a) in relation to the modification of standard conditions of relevant licences of any type, means the holder of a licence of that type—
    - (i) that is to be modified by the inclusion of a new standard condition, or
    - (ii) that includes any standard conditions to which the modification relates that are in effect at the end of the period specified by virtue of subsection (1)(c);
  - (b) in relation to the modification of a condition of a particular relevant licence (other than a standard condition), means the holder of that licence;
  - (c) in relation to the modification of a document maintained in accordance with the conditions of a relevant licence of a particular type, means the holder of a relevant licence of that type;
  - (d) in relation to the revocation of a relevant licence, means the holder of that licence.
- (9) In this section, “relevant authority” means the Secretary of State or the GEMA.

*Advice, analysis and information*

**171 Provision of advice, analysis or information**

- (1) The ISOP must, so far as reasonably practicable, comply with a request by a person within subsection (2) for the provision of advice, analysis or information to the person in connection with—
  - (a) any of the ISOP’s functions,
  - (b) any of the objectives listed in section 163(1), or
  - (c) any of the matters listed in section 164(1).
- (2) The persons within this subsection are—
  - (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975: see section 8(1) of that Act);
  - (b) the GEMA.
- (3) The ISOP must, so far as reasonably practicable, comply with a request made under subsection (1) within such period, and in such form and manner, as the person making the request may reasonably require.

**172 Power to require information from regulated persons etc**

- (1) The ISOP may by notice request from a person within subsection (2) such information as the ISOP reasonably requires in connection with the exercise of any of its functions.
- (2) A person is within this subsection if—
  - (a) the person carries out a relevant activity, or
  - (b) the ISOP reasonably considers that the person intends to carry out a relevant activity.

- (3) A person to whom a request is made under subsection (1) must, so far as reasonably practicable, provide the requested information within such period, and in such form and manner, as may be specified in the notice.
- (4) Where a requirement under subsection (3) is imposed on a regulated person (as defined by section 25(8) of the Electricity Act 1989), it is enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 25 of that Act.
- (5) Where a requirement under subsection (3) is imposed on a regulated person (as defined by section 28(8) of the Gas Act 1986), it is enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 28 of that Act.
- (6) Where neither of subsections (4) and (5) applies, the duty imposed under subsection (3) on a person is enforceable by the ISOP in civil proceedings –
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (7) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (within the meaning of the Data Protection Act 2018 - see section 3 of that Act).  
In determining whether a disclosure would do so, the duty imposed by subsection (3) is to be taken into account.

### **173 Duty to keep developments in energy sector under review**

The ISOP must keep under review developments relating to the energy sector that may be relevant to the carrying out of any of the ISOP's functions.

*Transfers, pensions and financial assistance*

### **174 Transfers**

Schedule 9 contains –

- (a) in Part 1, provision about transfer schemes relating to the ISOP;
- (b) in Part 2, related provision about transfers and other provision in connection with the designation of a person as the ISOP.

### **175 Pension arrangements**

Schedule 10 contains provision about pension arrangements in connection with the ISOP.

### **176 Financial assistance for the ISOP**

- (1) The Secretary of State may provide financial assistance to the ISOP.

- (2) Financial assistance under this section may be provided in any form and in particular may be provided by way of—
  - (a) grant,
  - (b) loan,
  - (c) guarantee or indemnity, or
  - (d) the acquisition of shares or any other interest in, or securities of, a body corporate.
- (3) Financial assistance under this section may be provided subject to such conditions as the Secretary of State considers appropriate (which may include conditions about repayment with or without interest or other return).

### 177 Cross-sectoral funding

- (1) In section 7 of the Electricity Act 1989 (conditions of licences: general), in subsection (3A)—
  - (a) for “or a distribution licence” substitute “, a distribution licence or an electricity system operator licence”;
  - (b) in paragraph (a), for “his charges for the transmission or distribution of electricity” substitute “the charges payable to the holder in connection with the transmission or distribution of electricity, or in connection with the exercise of any other functions under or by virtue of the licence,”;
  - (c) in paragraph (b), for “licence holders” substitute “holders of licences under section 6 or under Part 1 of the Gas Act 1986”.
- (2) In section 9 of that Act (general duties of licence holders), after subsection (2A) insert—

“(2B) The conditions of a licence held by a person to which a duty imposed by subsection (1) or (2) applies may include a condition requiring the person, in performing the duty, to have regard to the interests of existing and future consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986).”
- (3) In section 7B of the Gas Act 1986 (licences: general), in subsection (5)(b)—
  - (a) after “section 7” insert “or 7AA”;
  - (b) in sub-paragraph (i), for “his charges for the conveyance of gas” substitute “the charges payable to the holder in connection with the conveyance of gas, or in connection with the exercise of any other functions under or by virtue of the licence,”;
  - (c) in sub-paragraph (ii), for the words from “licences under” to “above” substitute “licences under this Part or under section 6 of the Electricity Act 1989”.
- (4) In section 9 of that Act (general powers and duties of gas transporters), after subsection (2) insert—

“(2A) The conditions of a licence held by a gas transporter may include a condition requiring the gas transporter, in performing a duty under



subsection (1), (1A) or (2), to have regard to the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (within the meaning of the Electricity Act 1989).”

*Other*

**178 Principal objective and general duties of Secretary of State and GEMA under Part 5**

- (1) Sections 3A to 3D of the Electricity Act 1989 and sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the functions of the Secretary of State under sections 162 and 167 as they apply in relation to functions under Part 1 of the Act in question.
- (2) Where the Secretary of State or the GEMA has functions under section 169, 170 or 172 in relation to a licence under section 6(1) of the Electricity Act 1989, sections 3A to 3D of that Act apply in relation to those functions as they apply in relation to functions under Part 1 of that Act.
- (3) Where the Secretary of State or the GEMA has functions under section 169, 170 or 172 in relation to a licence under section 7, 7ZA, 7A, 7AA, 7AB or 7AC of the Gas Act 1986, sections 4AA to 4B of that Act apply in relation to those functions as they apply in relation to functions under Part 1 of that Act.

**179 Minor and consequential amendments**

Schedule 11 contains further amendments to the Electricity Act 1989 and the Gas Act 1986.

**180 Interpretation of Part 5**

- (1) In this Part—
  - “distribution system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act);
  - “electricity system operator licence” has the meaning given by section 167(8);
  - “gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act);
  - “relevant activity” has the meaning given by section 163(5);
  - “relevant licence” means a licence for the purposes of section 4 of the Electricity Act 1989 or section 5 of the Gas Act 1986 (prohibitions on unlicensed activities);
  - “transmission system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act).
- (2) References in this Part to the distribution, generation, supply or transmission of electricity are to be construed in accordance with section 4(4) of the Electricity Act 1989.

- (3) For the purposes of this Part, references to the ISOP’s functions are to any functions that are exercisable by the person for the time being designated as the ISOP (whether they are exercisable in the person’s capacity as the ISOP or in another capacity).

## **181 Regulations under Part 5**

- (1) Regulations under this Part are subject to the negative procedure.
- (2) Subsection (1) does not apply to regulations under paragraph 9 of Schedule 9.

## **PART 6**

### GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES

#### *Key definitions for Part 6*

## **182 Designation of codes etc**

- (1) In this Part, “designated document” means a document that—
  - (a) is maintained in accordance with the conditions of a relevant licence, and
  - (b) is designated for the purposes of this Part by notice given by the Secretary of State.
- (2) The designation of a document has effect from the time specified in the notice under subsection (1)(b).
- (3) A notice under subsection (1)(b) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the designation.
- (4) The Secretary of State may revoke the designation of a document under this section.
- (5) The Secretary of State may not designate a document, or revoke the designation of a document, except so as to give effect to a recommendation of the GEMA.
- (6) Before making a recommendation to the Secretary of State for the purposes of subsection (5), the GEMA must consult such persons as it considers appropriate.
- (7) Subsection (6) does not apply in relation to the designation of a document where, immediately before being designated, the document is (or is treated as) a qualifying document within the meaning of Schedule 12.

### **183 Meaning of “code manager” and “code manager licence”**

- (1) In this Part, “code manager”, in relation to a designated document, means the holder of a code manager licence in respect of the document.
- (2) In this Part, “code manager licence” means a licence under section 7AC of the Gas Act 1986 or section 6(1)(g) of the Electricity Act 1989.
- (3) See sections 185 and 186, which contain amendments to the Gas Act 1986 and the Electricity Act 1989 in relation to the licences mentioned in subsection (2).

### **184 Designation of central systems**

- (1) In this Part, “designated central system” means a central system that is designated for the purposes of this Part by notice given by the Secretary of State.
- (2) “Central system” means an information technology system which has one or both of the following functions—
  - (a) to support the operation of the provisions of one or more designated documents;
  - (b) to process, transmit or store data in connection with the operation of the provisions of one or more designated documents.
- (3) The designation of a central system has effect from the time specified in the notice under subsection (1).
- (4) A notice under subsection (1) in relation to a central system must also specify the person (referred to in this Part as the “responsible body”) who is responsible, for the purposes of this Part, for operating or procuring the operation of the central system.
- (5) A notice under subsection (1) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the designation.
- (6) The Secretary of State may revoke the designation of a central system under this section.
- (7) The Secretary of State may not designate a central system, or revoke the designation of a central system, except so as to give effect to a recommendation of the GEMA.
- (8) Before making a recommendation to the Secretary of State for the purposes of subsection (7), the GEMA must consult such persons as it considers appropriate.
- (9) Subsection (8) does not apply in relation to the designation of a central system where—
  - (a) immediately before being designated, the central system is a qualifying central system within the meaning of Schedule 12, and

- (b) the designation does not involve any change to the responsible body in relation to the central system.
- (10) The Secretary of State may by notice provide—
  - (a) that the person who is the responsible body in relation to a designated central system is to cease to be the responsible body in relation to that system, and
  - (b) that a person specified in a notice under this paragraph is instead to be the responsible body in relation to the designated central system.
- (11) The Secretary of State may not give a notice under subsection (10) except so as to give effect to a recommendation of the GEMA.

*Licensing and selection of code manager*

**185 Licence under Gas Act 1986 for performance of code management function**

- (1) Part 1 of the Gas Act 1986 is amended as follows.
- (2) Section 5 (prohibition on unlicensed activities) is amended as follows.
- (3) After subsection (1)(d) insert “; or
  - (e) performs the function of code manager in relation to a designated gas licence document (see further subsections (11A) and (11B)),”.
- (4) After subsection (11) insert—
  - “(11A) A reference in this Part to a person (“P”) performing the function of code manager in relation to a designated gas licence document is a reference to making arrangements, with the persons to whom subsection (11B) applies, under which P is responsible for the governance of the document.
  - (11B) This subsection applies to the holder of a licence for the purposes of section 5 where a condition of the licence—
    - (a) requires the holder to comply with, or to enter into arrangements that conform with, the designated gas licence document in question, or
    - (b) imposes obligations on the holder that do not apply to the holder where the holder complies with that document.”
- (5) In subsection (12)—
  - (a) omit the “and” after the definition of “relevant information”;
  - (b) at the appropriate place insert—
    - ““designated gas licence document” means a document that is—
      - (a) maintained in accordance with the conditions of a licence for the purposes of section 5, and
      - (b) designated under section 182 of the Energy Act 2023;”.

(6) After section 7AB insert –

**“7AC Licensing of a person performing code manager function**

(1) The Authority may grant a licence (“a code manager licence”) authorising a person to perform the function of code manager in respect of a designated gas licence document.

(2) Where a designated gas licence document is also a designated electricity licence document, a person may not be granted a code manager licence in respect of the document unless the same person is at the same time granted a licence under section 6(1)(g) of the Electricity Act 1989.

(3) In this section –

“designated electricity licence document” has the same meaning as in section 4 of the Electricity Act 1989;

“designated gas licence document” has the same meaning as in section 5.”

(7) Section 7B (licences: general) is amended as follows.

(8) In subsection (5A) –

(a) after “smart meter communication licence” (in the first place it occurs) insert “or in a code manager licence”;

(b) for “smart meter communication licence” (in the second place it occurs) substitute “a licence of the same type”.

(9) In subsection (5B) –

(a) for “Secretary of State or the Authority” substitute “relevant authority”;

(b) in paragraph (b)(ii), after “licence” insert “or (in the case of an application for a code manager licence) apply for a licence otherwise than as part of a competition”.

(10) In subsection (5C), after “smart meter communication licence” insert “or in a code manager licence”.

(11) In subsection (5D), for “the Secretary of State or the Authority” substitute “the relevant authority”.

(12) In subsection (5E) –

(a) in paragraph (a), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”;

(b) in paragraph (b), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”.

(13) After subsection (5F) insert –

“(5FA) In subsections (5B) to (5E), “the relevant authority” means –

(a) in relation to a smart meter communication licence, the Secretary of State or the Authority;

(b) in relation to a code manager licence, the Authority.”

(14) In section 8AA (transfer of licences), after subsection (11A) insert—

“(11B) Where the holder of a code manager licence is also the holder of a licence under section 6(1)(g) of the Electricity Act 1989, the code manager licence may not be transferred to a person unless the licence under section 6(1)(g) of that Act is transferred to the same person at the same time.”

### **186 Licence under Electricity Act 1989 for performance of code management function**

(1) Part 1 of the Electricity Act 1989 is amended as follows.

(2) Section 4 (prohibition on unlicensed supply, etc) is amended as follows.

(3) In subsection (1)—

(a) omit the “or” after paragraph (d);

(b) after paragraph (e) insert “ or

(f) performs the function of code manager in relation to a designated electricity licence document (see further subsections (3H) and (3I)),”.

(4) After subsection (3G) insert—

“(3H) A reference in this Part to a person (“P”) performing the function of code manager in relation to a designated electricity licence document is a reference to making arrangements, with the persons to whom subsection (3I) applies, under which P is responsible for the governance of the document.

(3I) This subsection applies to the holder of a licence for the purposes of section 4 where a condition of the licence requires the holder to comply with the designated electricity licence document in question.”

(5) In subsection (6), at the appropriate place insert—

““designated electricity licence document” means a document that is—

(a) maintained in accordance with the conditions of a licence for the purposes of section 4, and

(b) designated under section 182 of the Energy Act 2023;”.

(6) Section 6 (licences authorising supply, etc) is amended as follows.

(7) In subsection (1)—

(a) omit the “or” after paragraph (e);

(b) after paragraph (f) insert “, or

(g) a licence authorising a person to perform the function of code manager in relation to a designated electricity licence document (“a code manager licence”).”

- (8) After subsection (2B) insert –
- “(2C) Where a designated electricity licence document is also a designated gas licence document, a person may not be granted a code manager licence in relation to the document unless the same person is at the same time granted a licence under section 7AC of the Gas Act 1986.”
- (9) For subsection (10) substitute –
- “(10) In this section –
- “designated electricity licence document” has the same meaning as in section 4;
  - “designated gas licence document” has the same meaning as in section 5 of the Gas Act 1986;
  - “premises” has the same meaning as in section 4.”
- (10) Section 7 (conditions of licences: general) is amended as follows.
- (11) In subsection (3B) –
- (a) after “smart meter communication licence” (in the first place it occurs) insert “or in a code manager licence”;
  - (b) for “smart meter communication licence” (in the second place it occurs) substitute “a licence of the same type”.
- (12) In subsection (3C) –
- (a) for “Secretary of State or the Authority” substitute “relevant authority”;
  - (b) in paragraph (b)(ii), after “licence” insert “or (in the case of an application for a code manager licence) apply for a licence otherwise than as part of a competition”.
- (13) In subsection (3D), after “smart meter communication licence” insert “or in a code manager licence”.
- (14) In subsection (3E), for “the Secretary of State or the Authority” substitute “the relevant authority”.
- (15) In subsection (3F) –
- (a) in paragraph (a), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”;
  - (b) in paragraph (b), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”.
- (16) In subsection (3G)(a), after “licence” insert “or (as the case may be) code manager licence”.
- (17) After subsection (3G) insert –
- “(3GA) In subsections (3C) to (3F), “the relevant authority” means –
- (a) in relation to a smart meter communication licence, the Secretary of State or the Authority;
  - (b) in relation to a code manager licence, the Authority.”

- (18) In section 7A (transfer of licences), after subsection (11A) insert—
- “(11B) Where the holder of a code manager licence is also the holder of a licence under section 7AC of the Gas Act 1986, the code manager licence may not be transferred to a person unless the licence under section 7AC of that Act is transferred to the same person at the same time.”

### **187 Selection of code manager**

- (1) The GEMA must determine whether the selection of the person who is to be the code manager in relation to a designated document is to be made—
- (a) on a non-competitive basis, in accordance with regulations made by the Secretary of State under section 188, or
  - (b) on a competitive basis, in accordance with regulations made by the GEMA under section 189.
- (2) The Secretary of State may by regulations make—
- (a) provision about the making of determinations under subsection (1) by the GEMA (which may include provision specifying criteria to be applied by the GEMA in making determinations);
  - (b) provision enabling the GEMA, in circumstances specified in the regulations, to change the basis on which the selection of a code manager is to be made.
- (3) The Secretary of State may by regulations—
- (a) specify requirements to be met by or in relation to a person in order for the person to be selected as the code manager in relation to a designated document;
  - (b) specify persons, or persons of a particular description, who may or may not be selected to be a code manager in relation to a designated document.

### **188 Selection on a non-competitive basis**

- (1) The Secretary of State may by regulations make provision about the selection by the GEMA, otherwise than on a competitive basis, of the person who is to be the code manager in relation to a designated document.
- (2) Regulations under this section may make provision by reference to a determination by the GEMA or to the opinion of the GEMA as to any matter.
- (3) Regulations under this section must make provision so as to ensure that a person (“P”) may not be selected to be the code manager in relation to a designated document unless the GEMA is satisfied that P would not, if selected, have a financial or other interest likely to prejudice the discharge by P of the functions of code manager.



- (4) The provision that may be made by virtue of subsection (1) includes provision for the selection by the GEMA of a person (other than an individual) formed by the GEMA.

### **189 Selection on a competitive basis**

- (1) The GEMA may by regulations make provision for a determination by the GEMA on a competitive basis of the person who is to be selected to be the code manager in relation to a designated document.
- (2) Regulations under this section may make provision about the procedure relating to the making of such a determination, which may include provision—
  - (a) in prescribed cases, for the publication of a proposal to select a code manager in relation to a designated document;
  - (b) for the inclusion in such a proposal of an invitation to apply for selection;
  - (c) imposing conditions in relation to the making of applications (whether in pursuance of a proposal published as mentioned in paragraph (a) or otherwise);
  - (d) restricting the making of applications and imposing requirements as to the period within which they must be made;
  - (e) for regulating the manner in which applications are considered or determined;
  - (f) authorising or requiring the GEMA, when determining whom to select, to have regard to the person’s suitability for being selected.
- (3) Regulations under this section may make provision by reference to a determination by the GEMA or to the opinion of the GEMA as to any matter.
- (4) Regulations under this section must make provision so as to ensure that a person (“P”) may not be selected to be the code manager in relation to a designated document unless the GEMA is satisfied that P would not, if selected, have a financial or other interest likely to prejudice the discharge by P of the functions of code manager.
- (5) The approval of the Secretary of State is required for the making of regulations under this section.
- (6) In this section, “prescribed” means prescribed by or determined in accordance with regulations made by the GEMA.

#### *Strategic direction statement for designated documents*

### **190 Strategic direction statement**

- (1) The GEMA must, each year, prepare and publish a statement setting out a strategic direction for designated documents.
- (2) A statement prepared and published under subsection (1) is referred to in this Part as a “strategic direction statement”.

- (3) A strategic direction statement must in particular –
  - (a) contain a strategic assessment of government policies, and of developments relating to the energy sector, that the GEMA considers will or may require the making of modifications to designated documents;
  - (b) cover such other matters relating to designated documents as the Secretary of State may specify in regulations.
- (4) In preparing a strategic direction statement, the GEMA must have regard to any advice given to it by the Independent System Operator and Planner so far as relevant to the matters referred to in subsection (3).
- (5) Before publishing a strategic direction statement in any year, the GEMA must –
  - (a) publish a notice containing a draft of the document,
  - (b) send a copy of the notice to the persons listed in subsection (6), and
  - (c) consider any representations about the draft made within the period specified in the notice.
- (6) The persons referred to in subsection (5)(b) are –
  - (a) the Secretary of State;
  - (b) the National Association of Citizens Advice Bureaux;
  - (c) the Scottish Association of Citizens Advice Bureaux;
  - (d) Consumer Scotland.
- (7) A notice under subsection (5) must be published by the GEMA in whatever way it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.

#### **191 Transfer of functions under section 190 to Independent System Operator and Planner**

- (1) The Secretary of State may by regulations amend section 190 so as to provide for functions under that section to be exercisable by the Independent System Operator and Planner (instead of by the GEMA).
- (2) Before making regulations under this section, the Secretary of State must consult –
  - (a) the GEMA,
  - (b) the Independent System Operator and Planner, and
  - (c) any other persons whose interests are likely to be affected by the proposal.
- (3) Regulations under this section –
  - (a) must repeal section 190(4);
  - (b) must add the GEMA to the list of persons in section 190(6);
  - (c) may make such other amendments to section 190 as the Secretary of State considers appropriate.

*Modifications and directions*

**192 Modification of designated documents by GEMA**

- (1) The GEMA may modify a designated document if any of subsections (2) to (6) applies.
- (2) This subsection applies where the GEMA considers that—
  - (a) the designated document needs to be modified as a matter of urgency,
  - (b) the making of the modification is likely to be delayed if done in accordance with the normal modification procedures for the document, and
  - (c) such a delay would have adverse effects on—
    - (i) consumers, or
    - (ii) any person with rights or obligations under the document, other than the GEMA.
- (3) This subsection applies where the GEMA considers that a financial or other interest of the code manager in respect of the matter to which the modification relates is likely to prejudice the making of the modification if done in accordance with the normal modification procedures for the document.
- (4) This subsection applies where the GEMA considers that—
  - (a) the modification is required for the purpose of implementing a strategic direction statement under section 190, and
  - (b) the nature of the modification (for example, its complexity) is such that it needs to be made under this section rather than in accordance with the normal modification procedures for the designated document.
- (5) This subsection applies where the GEMA considers that the modification is required in connection with the incorporation of the whole or part of the provision made by the designated document into another document (whether or not a designated document).
- (6) This subsection applies where the GEMA considers that the modification is required in consequence of the exercise of any power conferred by Schedule 12 (transitional provisions) in relation to a different document.
- (7) The Secretary of State may by regulations make—
  - (a) provision specifying requirements to be met in relation to the exercise of the power under subsection (1);
  - (b) provision supplementing subsections (2) to (6).
- (8) References in this section to the normal modification procedures for a designated document are to provision, relating to the procedure for modifying the document, that—
  - (a) is contained in the document, or
  - (b) applies pursuant to any condition of a licence in accordance with which the document is maintained.

**193 Modification under section 192**

- (1) Before making a modification under section 192, the GEMA must—
  - (a) publish a notice about the proposed modification,
  - (b) send a copy of the notice to the persons listed in subsection (2), and
  - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are—
  - (a) the Secretary of State,
  - (b) the code manager in relation to the designated document to which the proposed modification relates, and
  - (c) such other persons as the GEMA considers appropriate.
- (3) A notice under subsection (1) must—
  - (a) state that the GEMA proposes to make a modification;
  - (b) set out the proposed modification and its effect;
  - (c) specify the date from which the GEMA proposes that the modification will have effect;
  - (d) state—
    - (i) why the GEMA is seeking to make the modification under section 192 (by reference to whichever of subsections (2) to (6) of section 192 applies), and
    - (ii) the reasons for the proposed modification.
- (4) If, within the period specified by virtue of subsection (1)(c), the Secretary of State directs the GEMA not to make the proposed modification, the GEMA must comply with the direction.
- (5) If, after complying with subsections (1) to (3) in relation to a proposed modification, the GEMA decides to make a modification, it must publish a notice about the decision.
- (6) A notice under subsection (5) must—
  - (a) state that the GEMA has decided to make the modification;
  - (b) set out the modification and its effect;
  - (c) specify the date from which the modification has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under subsection (1);
  - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this section about a proposed modification or a decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.

#### **194 Directions relating to designated central systems**

- (1) The GEMA may give a direction to the responsible body in relation to a designated central system for the purpose of ensuring that the body—
  - (a) complies with its obligations under a relevant designated document, or
  - (b) takes such steps as the GEMA considers may be necessary for the efficient operation or implementation of the provisions of a relevant designated document.
- (2) When determining whether to give a direction under this section, the GEMA must have regard to the ability of the responsible body to whom the direction would be given—
  - (a) to recover any costs reasonably incurred by the body in complying with the direction, and
  - (b) to comply with the direction without contravening any obligations of the body under a relevant designated document or in relation to the operation of the designated central system.
- (3) A responsible body must comply with a direction given to it under this section.
- (4) In this section and section 195, “relevant designated document”, in relation to a designated central system, means a designated document in respect of which the central system has a function mentioned in section 184(2).

#### **195 Directions under section 194**

- (1) Before giving a direction under section 194, the GEMA must—
  - (a) publish a notice about the proposed direction,
  - (b) send a copy of the notice to the persons listed in subsection (2), and
  - (c) consider any representations made within the period specified in the notice about the proposed direction or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are—
  - (a) the responsible body to whom the direction is proposed to be given, and
  - (b) the code manager in relation to the relevant designated document.
- (3) A notice under subsection (1) must—
  - (a) state that the GEMA proposes to give a direction;
  - (b) set out the proposed direction and its effect;
  - (c) specify the date from which the GEMA proposes that the direction will have effect;
  - (d) state the reasons why the GEMA proposes to give the direction.
- (4) If, after complying with subsections (1) to (3) in relation to a direction, the GEMA decides to give a direction, it must publish a notice about the decision.

- (5) A notice under subsection (4) must—
  - (a) state that the GEMA has decided to give the direction;
  - (b) set out the direction and its effect;
  - (c) specify the date from which the direction has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under subsection (1);
  - (e) state the reason for any differences between the direction set out in the notice and the proposed direction.
- (6) A notice under this section about a proposed direction or a decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the direction or decision.

*General objectives and reports*

**196 Principal objective and general duties of Secretary of State and GEMA under Part 6**

Sections 4AA to 4B of the Gas Act 1986 and sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the functions under this Part of the Secretary of State and of the GEMA as they apply in relation to functions of the Secretary of State and of the GEMA under Part 1 of that Act.

**197 GEMA’s annual report to cover matters relating to designated documents**

- (1) Section 5 of the Utilities Act 2000 (annual and other reports of the GEMA) is amended as follows.
- (2) After subsection (3) insert—

“(3A) The annual report for each year must also include an overview of—

  - (a) developments relating to documents designated for the purposes of Part 6 of the Energy Act 2023 (governance of gas and electricity industry codes);
  - (b) decisions made by the Authority during the year in relation to such documents, including details of any modifications made under section 192 of the Energy Act 2023.”

*Other*

**198 Regulations under Part 6**

- (1) Regulations under this Part are subject to the negative procedure, subject to subsection (2).
- (2) Regulations under section 191 are subject to the affirmative procedure.

## **199 Interpretation of Part 6**

In this Part –

- “central system” and “designated central system” have the meaning given by section 184;
- “code manager”, in relation to a designated document, has the meaning given by section 183(1);
- “code manager licence” has the meaning given by section 183(2);
- “designated document” has the meaning given by section 182(1);
- “the Independent System Operator and Planner” means the person for the time being designated under section 162(1);
- “relevant licence” means a licence for the purposes of section 4 of the Electricity Act 1989 or section 5 of the Gas Act 1986 (prohibitions on unlicensed activities);
- “responsible body”, in relation to a designated central system, has the meaning given by section 184(4).

## **200 Transitional provision and pension arrangements**

- (1) Schedule 12 contains transitional provision in connection with this Part.
- (2) Schedule 13 contains provision about pension arrangements in connection with this Part.

## **201 Minor and consequential amendments**

Schedule 14 contains minor and consequential amendments in connection with this Part.

## **PART 7**

### **MARKET REFORM AND CONSUMER PROTECTION**

#### *Principal objectives of Secretary of State and GEMA*

## **202 Principal objectives of Secretary of State and GEMA**

- (1) Section 4AA of the Gas Act 1986 (principal objective and general duties of Secretary of State and GEMA) is amended as set out in subsections (2) and (3).
- (2) In subsection (1A)(a), for “the reduction of gas-supply emissions of targeted greenhouse gases” substitute “the Secretary of State’s compliance with the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (net zero target for 2050 and five-year carbon budgets)”.
- (3) In subsection (5B), omit the definitions of “emissions”, “gas-supply emissions” and “targeted greenhouse gases”.

- (4) Section 3A of the Electricity Act 1989 (principal objective and general duties of Secretary of State and GEMA) is amended as set out in subsections (5) and (6).
- (5) In subsection (1A)(a), for “the reduction of electricity-supply emissions of targeted greenhouse gases” substitute “the Secretary of State’s compliance with the duties in sections 1 and 4(1)(b) of the Climate Change Act 2008 (net zero target for 2050 and five-year carbon budgets)”.
- (6) In subsection (5B), omit the definitions of “emissions”, “electricity-supply emissions” and “targeted greenhouse gases”.

### *Competition*

#### **203 Competitive tenders for electricity projects**

- (1) Schedule 15 contains amendments of the Electricity Act 1989 in connection with enabling competitive tendering for electricity projects.
- (2) The power conferred by section 330(1) (consequential provision) includes, in particular, power to amend provision inserted in the Electricity Act 1989 by Schedule 15 where the amendment is consequential on the coming into force of paragraph 4 of Schedule 11.

#### **204 Mergers of energy network enterprises**

- (1) Schedule 16 makes provision about mergers of energy network enterprises.
- (2) The Secretary of State must carry out a review of the operation of sections 68A to 68F of, and Schedule 5A to, the Enterprise Act 2002 (inserted by Schedule 16) before the end of the period of 5 years beginning with the day on which paragraph 2 of Schedule 16 to this Act comes into force.
- (3) The Secretary of State must set out the conclusions of the review in a report.
- (4) The report must, in particular –
  - (a) set out the objectives of the provisions subject to review,
  - (b) assess the extent to which those objectives have been achieved, and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (5) The Secretary of State must lay the report before Parliament.

### *Multi-purpose interconnectors*

#### **205 Licence required for operation of multi-purpose interconnector**

- (1) Section 4 of the Electricity Act 1989 (prohibition on unlicensed supply etc of electricity) is amended in accordance with subsections (2) to (5).



- (2) In subsection (1) –
  - (a) omit the “or” after paragraph (d);
  - (b) after paragraph (d) insert –
    - “(da) participates in the operation of a multi-purpose interconnector; or”.
- (3) After subsection (3C) insert –
  - “(3CA) A reference in this Part to participating in the operation of a multi-purpose interconnector is a reference to –
    - (a) co-ordinating and directing the flow of electricity into or through a multi-purpose interconnector; or
    - (b) making a multi-purpose interconnector available for use for the conveyance of electricity,and a person is not to be regarded as participating in the operation of an interconnector or as participating in the transmission of electricity by reason only of activities constituting participation in the operation of a multi-purpose interconnector.”
- (4) In subsection (3D), after “(3C)(b)” insert “and (3CA)(b)”.
- (5) After subsection (3E) insert –
  - “(3EA) In this Part “multi-purpose interconnector” means so much of an electric line or other electrical plant as –
    - (a) is situated at a place within the jurisdiction of Great Britain; and
    - (b) subsists for both –
      - (i) the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory, and
      - (ii) the conveyance of electricity generated in offshore waters (whether in both directions or in only one) between a generating station and a substation or another generating station, or between two or more substations.”
- (6) In section 5 of the Electricity Act 1989 (exemptions from prohibition), in subsection (1), after “(d)” insert “, (da)”.
- (7) Section 6 of the Electricity Act 1989 (licences authorising supply, etc) is amended in accordance with subsections (8) to (10).
- (8) In subsection (1) –
  - (a) omit the “or” after paragraph (e);
  - (b) after paragraph (e) insert –
    - “(ea) a licence authorising a person to participate in the operation of a multi-purpose interconnector (“an MPI licence”); or”.

- (9) After subsection (2A) insert –
- “(2AA) The same person may not be the holder of an MPI licence and the holder of a licence falling within any of paragraphs (a) to (e) of subsection (1).”
- (10) After subsection (6D) insert –
- “(6E) An MPI licence authorising participation in the operation of a multi-purpose connector –
- (a) must specify the multi-purpose interconnector or multi-purpose interconnectors in relation to which participation is authorised;
  - (b) may limit the forms of participation in the operation of a multi-purpose interconnector which are authorised by the licence.”
- (11) In section 64(1) of the Electricity Act 1989 (interpretation of Part 1), at the appropriate place insert –
- ““multi-purpose interconnector” has the meaning given by section 4(3EA);”.

## 206 Standard conditions for MPI licences

- (1) The Secretary of State must, before subsection (6) comes into force, determine standard conditions for MPI licences.
- (2) Those standard conditions may contain provision –
  - (a) for a standard condition included in an MPI licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
  - (b) for the effect of a standard condition included in an MPI licence to be suspended in such manner, and in such circumstances, as may be so specified or determined; or
  - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by the Secretary of State under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.
- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under –
  - (a) Part 1 of the Electricity Act 1989,
  - (b) section 37 or 45 of the Energy Act 2013, or
  - (c) this Act.

- (6) In section 8A of Electricity Act 1989 (standard conditions of licences), after subsection (1B) insert—

“(1C) Subject to subsection (2), each condition which by virtue of section 206 of the Energy Act 2023 is a standard condition for the purposes of MPI licences is incorporated, by reference, in each MPI licence granted on or after the day on which subsection (6) of that section comes into force.”

- (7) In this section, “MPI licence” means a licence under section 6(1)(ea) of the Electricity Act 1989 (inserted by section 205 of this Act).

## **207 Operation of multi-purpose interconnectors: independence**

- (1) In the italic heading above section 10A of the Electricity Act 1989, after “interconnectors” insert “and multi-purpose interconnectors”.

- (2) After section 10N of the Electricity Act 1989 insert—

### **“10NA Electricity transmission and the operation of multi-purpose interconnectors: independence**

- (1) A person who, for any qualifying period, holds an MPI licence and participates in the operation of a multi-purpose interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.
- (2) Sections 10B to 10N apply for the purposes of subsection (1) as they apply for the purposes of section 10A(3), but as if—
- (a) references to an electricity interconnector were references to a multi-purpose interconnector;
  - (b) references to an interconnector licence (or to a licence under section 6(1)(e)) were to an MPI licence (or to a licence under section 6(1)(ea)).
- (3) In this section, “qualifying period” means a period beginning on or after the day on which section 207 of the Energy Act 2023 comes into force.”
- (3) In section 10O(1) of the Electricity Act 1989 (interpretation), for “10N” substitute “10NA”.

## **208 Grant of MPI licences to existing operators**

- (1) This section applies where a person holds a licence under section 6(1)(e) of the Electricity Act 1989 (interconnector licence) or an offshore transmission licence on the day on which section 205 of this Act comes into force.
- (2) The Secretary of State has power to grant an MPI licence to that person under section 6 of the Electricity Act 1989.

- (3) Sections 6A(5), 7 and 8A of the Electricity Act 1989 (notice of licence and licence conditions) have effect in relation to the grant of a licence by the Secretary of State by virtue of this section as if—
  - (a) references in those provisions to the Authority included references to the Secretary of State, and
  - (b) in section 8A—
    - (i) in subsection (4)(b), the words “the Secretary of State,” were omitted, and
    - (ii) subsection (5) were omitted.
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
  - (a) that person,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (5) Subsection (4) may be satisfied by consultation before this section comes into force (as well as by consultation after that time).
- (6) In this section—

“MPI licence” means a licence under section 6(1)(ea) of the Electricity Act 1989 (inserted by section 205 of this Act);

“offshore transmission licence” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act).

## **209 Power to make consequential etc provision**

- (1) The Secretary of State may by regulations make consequential, supplementary, incidental, transitional or saving provision in connection with sections 205 to 208.
- (2) The provision that may be made by virtue of subsection (1) includes provision amending, repealing or revoking an Act of Parliament or retained direct EU legislation.
- (3) Before making regulations under subsection (1), the Secretary of State must consult—
  - (a) the GEMA, and
  - (b) such other persons as the Secretary of State considers appropriate.
- (4) Regulations under subsection (1) are subject to the affirmative procedure.

## **210 Consequential amendments relating to multi-purpose interconnectors**

Schedule 17 contains minor and consequential amendments.

*Support for energy-intensive industries*

**211 Electricity support payments for energy-intensive industries**

- (1) The Secretary of State may make regulations requiring payments (“electricity support payments”) to be made to a person who carries out an energy-intensive activity, for the purpose of alleviating the impact on the person of electricity costs.
- (2) In subsection (1), “energy-intensive activity” means an activity (or description of activity) that is designated as such in the regulations.
- (3) The regulations may make provision –
  - (a) about the circumstances in which a person is eligible for electricity support payments;
  - (b) about how eligibility is to be considered and determined;
  - (c) setting out a process for applying for electricity support payments, including provision about the form and content of applications;
  - (d) about the calculation of electricity support payments;
  - (e) requiring a person to provide information that is relevant to their eligibility for electricity support payments or to the calculation of any such payments;
  - (f) requiring a person who supplies electricity to another person to provide information that is relevant to the matters mentioned in paragraph (e) (whether to the person to whom the information relates or to another person specified in the regulations);
  - (g) about the sharing of information provided by virtue of paragraph (e) or (f);
  - (h) requiring past electricity support payments to be repaid (with or without interest) in circumstances specified in the regulations;
  - (i) about how amounts repaid by virtue of paragraph (h) are to be applied (including provision for amounts to be held in reserve or paid into the Consolidated Fund);
  - (j) for the enforcement of obligations imposed by or under the regulations (including provision about interest on late payments and imposing financial penalties);
  - (k) 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).
- (4) Where by virtue of subsection (3)(j) the regulations provide for the imposition of a financial penalty, they must also provide for a right of appeal against the imposition of the penalty.
- (5) The regulations may –

- (a) appoint a person, with the person’s consent, to carry out functions in connection with electricity support payments (a “support payment administrator”);
  - (b) confer functions on the support payment administrator;
  - (c) require the support payment administrator to provide information or assistance to the Secretary of State, or to another person specified in the regulations, in relation to any functions so conferred.
- (6) Where –
- (a) the regulations impose a requirement on a regulated person (as defined by section 25(8) of the Electricity Act 1989),
  - (b) the requirement is enforceable by a support payment administrator, and
  - (c) the support payment administrator is the GEMA,
- the regulations may provide for the requirement to be enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 25 of that Act.
- (7) The regulations may provide for any sum –
- (a) that a person is required under the regulations to pay to the Secretary of State or to a support payment administrator, and
  - (b) that has not been paid by the date required,
- to be recoverable from the person as a civil debt due to the Secretary of State or to the support payment administrator (as the case may be).
- (8) The regulations may make provision about the terms of a support payment administrator’s appointment, including provision –
- (a) for the support payment administrator to be remunerated, or compensated for costs that they incur;
  - (b) about how an appointment may be terminated by the Secretary of State or by the support payment administrator, and when termination takes effect.
- (9) If functions of a support payment administrator (“the outgoing administrator”) are to be taken on by another support payment administrator or by the Secretary of State (“the successor”), the regulations may –
- (a) require the outgoing administrator to take steps specified in the regulations to enable or facilitate the carrying out of those functions by the successor;
  - (b) provide for the transfer of any property, rights or liabilities from the outgoing administrator to the successor;
  - (c) provide for anything done by or in relation to the outgoing administrator in connection with any property, rights or liabilities to be treated as done, or to be continued, by or in relation to the successor.

“Property” in this subsection includes interests of any description.

- (10) Regulations under this section may confer a discretion on the Secretary of State or on a support payment administrator.
- (11) Regulations under this section are subject to the affirmative procedure.

## **212 Levy to fund electricity support payments**

- (1) The Secretary of State may make regulations requiring the payment of a levy by electricity suppliers for the purpose of funding—
  - (a) the making of electricity support payments by virtue of section 211 (including expected future payments);
  - (b) any other costs arising by virtue of section 211 or this section (including expected future costs).
- (2) The regulations may make provision—
  - (a) about the calculation of the levy;
  - (b) requiring electricity suppliers to provide financial collateral in respect of their obligations to pay the levy, and about the form and terms of such collateral;
  - (c) for the issuing of notices to require the payment of the levy or the provision of collateral;
  - (d) for the provision of copies of such notices to persons specified in the regulations or for the publication of such notices;
  - (e) about how amounts of levy are to be applied once paid (including provision for amounts to be held in reserve or paid into the Consolidated Fund);
  - (f) for the recovery of unpaid amounts of levy in the event of the insolvency or default of an electricity supplier (including provision requiring amounts to be borne by other electricity suppliers in accordance with the regulations);
  - (g) requiring electricity suppliers or the GEMA to provide information that is needed to determine—
    - (i) what an electricity supplier’s obligations are in relation to the levy, or
    - (ii) whether an electricity supplier has complied with those obligations;
  - (h) about the sharing of information provided by virtue of paragraph (g);
  - (i) for the enforcement of obligations imposed by or under the regulations (including provision about interest on late payments and imposing financial penalties);
  - (j) 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).
- (3) Where by virtue of subsection (2)(i) the regulations provide for the imposition of a financial penalty, they must also provide for a right of appeal against the imposition of the penalty.

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- (4) The regulations may –
- (a) appoint a person, with the person’s consent, to carry out functions in connection with the levy (a “levy administrator”);
  - (b) confer functions on the levy administrator;
  - (c) require the levy administrator to provide information or assistance to the Secretary of State, or to another person specified in the regulations, in relation to any functions so conferred.
- (5) Where –
- (a) the regulations impose a requirement on a regulated person (as defined by section 25(8) of the Electricity Act 1989),
  - (b) the requirement is enforceable by a levy administrator, and
  - (c) the levy administrator is the GEMA,
- the regulations may provide for the requirement to be enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 25 of that Act.
- (6) The regulations may provide for any sum –
- (a) that a person is required under the regulations to pay to the Secretary of State or to a levy administrator, and
  - (b) that has not been paid by the date required,
- to be recoverable from the person as a civil debt due to the Secretary of State or to the levy administrator (as the case may be).
- (7) The regulations may make provision about the terms of a levy administrator’s appointment, including provision –
- (a) for the levy administrator to be remunerated, or compensated for costs that they incur;
  - (b) about how an appointment may be terminated by the Secretary of State or by the levy administrator, and when termination takes effect.
- (8) If functions of a levy administrator (“the outgoing administrator”) are to be taken on by another levy administrator or by the Secretary of State (“the successor”), the regulations may –
- (a) require the outgoing administrator to take steps specified in the regulations to enable or facilitate the carrying out of those functions by the successor;
  - (b) provide for the transfer of any property, rights or liabilities from the outgoing administrator to the successor;
  - (c) provide for anything done by or in relation to the outgoing administrator in connection with any property, rights or liabilities to be treated as done, or to be continued, by or in relation to the successor.
- “Property” in this subsection includes interests of any description.
- (9) Regulations under this section may confer a discretion on the Secretary of State or on a levy administrator.



- (10) Regulations under this section are subject to the affirmative procedure.
- (11) In this section, “electricity supplier” means the holder of a licence under section 6(1)(d) of the Electricity Act 1989.

### *Electricity storage*

#### **213 Electricity storage**

In section 4 of the Electricity Act 1989 (prohibition on unlicensed generation etc of electricity), after subsection (3) insert—

- “(3ZA) In subsection (1)(a), the reference to a person who generates electricity includes a reference to a person who generates electricity from stored energy.
- (3ZB) In subsection (3ZA), “stored energy” means energy that—
  - (a) was converted from electricity, and
  - (b) is stored for the purpose of its future reconversion into electricity.”

### *Reduction targets: carbon emissions and home-heating costs*

#### **214 Payment as alternative to complying with certain energy company obligations**

- (1) In section 33BC of the Gas Act 1986 (promotion of reductions in carbon emissions: gas transporters and gas suppliers), after subsection (7B) insert—

“(7C) The order may make provision as to circumstances in which a transporter or supplier may meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.

- (7D) In this section, “buy-out payment” means a payment—
  - (a) of an amount (“the buy-out price”) determined by the Secretary of State,
  - (b) to a person approved by the Administrator (an “approved person”),
  - (c) for a purpose approved by the Administrator (an “approved purpose”).

(7E) Provision made by virtue of subsection (7C) may include provision about the determination by the Secretary of State of the buy-out price, including provision—

- (a) enabling the Secretary of State to set different buy-out prices—
  - (i) for different parts of the period to which the order relates;
  - (ii) for different cases (including different buy-out prices for different transporters or suppliers);
- (b) requiring the Secretary of State to publish the buy-out price.

- (7F) If the order makes provision by virtue of subsection (7C), the order may also make provision—
- (a) as to the procedure to be followed by the Administrator in approving a person as an approved person or a purpose as an approved purpose;
  - (b) specifying criteria by reference to which the Administrator is to determine whether to approve a person or purpose.
- (7G) Provision made by virtue of subsection (7C) may include further provision about buy-out payments, including in particular provision—
- (a) as to the procedure to be followed by a transporter or supplier who proposes to make a buy-out payment, including provision—
    - (i) requiring a transporter or supplier to notify the Administrator of specified matters by a specified time;
    - (ii) as to circumstances in which a transporter or supplier must make the buy-out payment to which notification given to the Administrator relates;
    - (iii) about the process for seeking approval of a person as an approved person, or of a purpose as an approved purpose;
  - (b) preventing a transporter or supplier from treating a buy-out payment as a payment pursuant to any other obligation (whether statutory or contractual), or vice versa;
  - (c) setting out circumstances in which a requirement imposed on a transporter or supplier by provision made by virtue of subsection (5)(ba) or (bb) may be—
    - (i) met, in whole or in part, by the making of a buy-out payment;
    - (ii) varied as a result of a buy-out payment;
  - (d) about the effect of provision included in the order by virtue of subsection (7)(c) to (e) on a person’s ability to meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.
- (7H) Where an order includes provision for the making of a buy-out payment, the references in subsections (5)(be) and (7)(b) to action include a reference to the making of a buy-out payment.”
- (2) In section 33BCA of the Gas Act 1986 (Scottish Ministers’ promotion of reductions in carbon emissions: gas suppliers) —
- (a) in subsection (3) —
    - (i) in paragraph (b), after “(7)(a)” insert “, (7C), (7E)”;
    - (ii) after paragraph (c) insert —
      - “(ca) in subsection (7F), for “order makes” is substituted “Secretary of State has made”;

- (cb) in subsection (7G), for “(7C)” is substituted “(7F)”;
    - (cc) in subsection (7H), for “an order includes” is substituted “the Secretary of State has made”;
  - (iii) in paragraph (g), after “place” insert “other than in subsection (7D)(a)”;
  - (b) in subsection (9)(a), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.
- (3) In section 33BDA of the Gas Act 1986 (Scottish Ministers’ promotion of reductions in home-heating costs: gas suppliers) –
  - (a) in subsection (3) –
    - (i) in paragraph (c), after “(7)(a)” insert “, (7C), (7E)”;
    - (ii) after paragraph (d) insert –
      - “(da) in section 33BC(7F) as applied by subsection (4), for “order makes” is substituted “Secretary of State has made”;
      - (db) in section 33BC(7G) as applied by subsection (4), for “(7C)” is substituted “(7F)”;
      - (dc) in section 33BC(7H) as applied by subsection (4), for “an order includes” is substituted “the Secretary of State has made”;
    - (iii) in paragraph (h), after “subsection (4)” insert “other than in section 33BC(7D)(a)”;
  - (b) in subsection (9)(b), for “or (7)(a)” substitute “(7)(a), (7C) or (7E)”.
- (4) In section 41A of the Electricity Act 1989 (promotion of reductions in carbon emissions: electricity distributors and electricity suppliers), after subsection (7B) insert –
  - “(7C) The order may make provision as to circumstances in which a distributor or supplier may meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.
  - (7D) In this section, “buy-out payment” means a payment –
    - (a) of an amount (“the buy-out price”) determined by the Secretary of State,
    - (b) to a person approved by the Administrator (an “approved person”),
    - (c) for a purpose approved by the Administrator (an “approved purpose”).
  - (7E) Provision made by virtue of subsection (7C) may include provision about the determination by the Secretary of State of the buy-out price, including provision –
    - (a) enabling the Secretary of State to set different buy-out prices –
      - (i) for different parts of the period to which the order relates;

- (ii) for different cases (including different buy-out prices for different distributors or suppliers);
  - (b) requiring the Secretary of State to publish the buy-out price.
- (7F) If the order makes provision by virtue of subsection (7C), the order may also make provision –
  - (a) as to the procedure to be followed by the Administrator in approving a person as an approved person or a purpose as an approved purpose;
  - (b) specifying criteria by reference to which the Administrator is to determine whether to approve a person or purpose.
- (7G) Provision made by virtue of subsection (7C) may include further provision about buy-out payments, including in particular provision –
  - (a) as to the procedure to be followed by a distributor or supplier who proposes to make a buy-out payment, including provision –
    - (i) requiring a distributor or supplier to notify the Administrator of specified matters by a specified time;
    - (ii) as to circumstances in which a distributor or supplier must make the buy-out payment to which notification given to the Administrator relates;
    - (iii) about the process for seeking approval of a person as an approved person, or of a purpose as an approved purpose;
  - (b) preventing a distributor or supplier from treating a buy-out payment as a payment pursuant to any other obligation (whether statutory or contractual), or vice versa;
  - (c) setting out circumstances in which a requirement imposed on a distributor or supplier by provision made by virtue of subsection (5)(ba) or (bb) may be –
    - (i) met, in whole or in part, by the making of a buy-out payment;
    - (ii) varied as a result of a buy-out payment;
  - (d) about the effect of provision included in the order by virtue of subsection (7)(c) to (e) on a person’s ability to meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.
- (7H) Where an order includes provision for the making of a buy-out payment, the references in subsections (5)(be) and (7)(b) to action include a reference to the making of a buy-out payment.”
- (5) In section 41AA of the Electricity Act 1989 (Scottish Ministers’ promotion of reductions in carbon emissions: electricity suppliers) –
  - (a) in subsection (3) –
    - (i) in paragraph (b), after “(7)(a)” insert “, (7C), (7E)”;

- (ii) after paragraph (c) insert –
    - “(ca) in subsection (7F), for “order makes” is substituted “Secretary of State has made”;
    - (cb) in subsection (7G), for “(7C)” is substituted “(7F)”;
    - (cc) in subsection (7H), for “an order includes” is substituted “the Secretary of State has made”;
  - (iii) in paragraph (g), after “place” insert “other than in subsection (7D)(a)”;
  - (b) in subsection (9)(a), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.
- (6) In subsection 41BA of the Electricity Act 1989 (Scottish Ministers’ promotion of reductions in home-heating costs: electricity suppliers) –
- (a) in subsection (3) –
    - (i) in paragraph (c), after “(7)(a)” insert “, (7C), (7E)”;
    - (ii) after paragraph (d) insert –
      - “(da) in section 41A(7F) as applied by subsection (4), for “order makes” is substituted “Secretary of State has made”;
      - (db) in section 41A(7G) as applied by subsection (4), for “(7C)” is substituted “(7F)”;
      - (dc) in section 41A(7H) as applied by subsection (4), for “an order includes” is substituted “the Secretary of State has made”;
    - (iii) in paragraph (h), after “subsection (4)” insert “other than in section 41A(7D)(a)”;
  - (b) in subsection (9)(b), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.

#### *Smart meters*

### **215 Smart meters: extension of time for exercise of powers**

- (1) In section 88(5) of the Energy Act 2008 (expiry of power to amend licence conditions etc: smart meters), for “1 November 2023” substitute “1 November 2028”.
- (2) In the Gas Act 1986 –
  - (a) in section 8AA(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2023” substitute “1 November 2028”;
  - (b) in section 41HB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2023” substitute “1 November 2028”.
- (3) In the Electricity Act 1989 –

- 
- (a) in section 7A(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2023” substitute “1 November 2028”;
  - (b) in section 56FB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2023” substitute “1 November 2028”.
- (4) Subsections (5) and (6) apply if this section comes into force after 1 November 2023.
  - (5) Section 89(1) of the Energy Act 2008 (duty to consult on modifications) may be satisfied by consultation before, as well as by consultation after, 1 November 2023.
  - (6) Where –
    - (a) on or before 1 November 2023 the Secretary of State has, in accordance with section 89(3) of the Energy Act 2008, laid before Parliament a draft of proposed modifications under section 88 of that Act, and
    - (b) on that date the 40-day period referred to in section 89(4) of that Act has not expired,
 in calculating that 40-day period no account is to be taken of the period beginning with 2 November 2023 and ending immediately before the day on which this section comes into force.
  - (7) In the Smart Meters Act 2018, omit section 1.

## PART 8

### HEAT NETWORKS

#### CHAPTER 1

##### REGULATION OF HEAT NETWORKS

### 216 Relevant heat network

- (1) In this Chapter, “relevant heat network” means –
  - (a) a district heat network, or
  - (b) a communal heat network.
- (2) In this section –
  - “communal heat network” means a heat network by means of which heating, cooling or hot water is supplied only to a single building divided into separate premises or persons in those premises;
  - “district heat network” means a heat network by means of which heating, cooling or hot water is supplied to two or more buildings or persons in those buildings;
  - “heat network” means a network that, by distributing a liquid or a gas, enables the transfer of thermal energy for the purpose of supplying heating, cooling or hot water to a building or persons in that building

(and includes any appliance the main purpose of which is to heat or cool the liquid or gas).

- (3) For the purposes of subsection (2), a network is not excluded from being a heat network only by reason of its being designed to rely wholly or in part on heat pumps particular to the buildings or premises served by the network.
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definitions of “relevant heat network”, “district heat network”, “communal heat network” and “heat network”.
- (5) Regulations under this section are subject to the affirmative procedure.

## **217 The Regulator**

- (1) In this Chapter, “the Regulator” means –
  - (a) in relation to England and Wales and Scotland, the GEMA, and
  - (b) in relation to Northern Ireland, the NIAUR.
- (2) The Secretary of State may by regulations provide for functions of the Regulator in relation to England and Wales and Scotland to be carried out, to the extent specified in the regulations, by a person or body other than the GEMA.
- (3) The Department may by regulations provide for functions of the Regulator in relation to Northern Ireland to be carried out, to the extent specified in the regulations, by a person or body other than the NIAUR.
- (4) The Secretary of State may by regulations make such amendments of this Part as appear to the Secretary of State to be appropriate in consequence of provision made by virtue of subsection (2) or (3).
- (5) The Department may by regulations make such amendments of this Part as appear to the Department to be appropriate in consequence of provision made by virtue of subsection (3).
- (6) Regulations made by the Secretary of State under this section are subject to the affirmative procedure.
- (7) The power of the Department to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) Regulations made by the Department under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

## **218 Alternative dispute resolution for consumer disputes**

- (1) The Department may by regulations amend the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542) so as to provide for a person who, or a body which, from

time to time carries out to any extent in relation to Northern Ireland the functions conferred on the Regulator by this Chapter to be a competent authority for the purposes of those regulations.

- (2) The power of the Department to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (3) Regulations made by the Department under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

## **219 Heat networks regulations**

- (1) The appropriate authority may by regulations make provision for the purposes of –
  - (a) regulating relevant heat networks, or
  - (b) conferring powers in relation to the development or maintenance of relevant heat networks.
- (2) Schedule 18 contains further provision about the power to make regulations under this section.
- (3) The provision made in Schedule 18 is without prejudice to the generality of subsection (1).
- (4) Regulations under this section may –
  - (a) contain such consequential, incidental, supplementary, transitional or saving provisions as the appropriate authority considers appropriate;
  - (b) make different provision for different purposes;
  - (c) provide for a person to exercise discretion in dealing with any matter.
- (5) Regulations made by the Secretary of State by virtue of subsection (4)(a) may include –
  - (a) provisions amending or repealing an Act of Parliament, an Act or Measure of Senedd Cymru or Northern Ireland legislation;
  - (b) provisions amending the Heat Networks (Scotland) Act 2021 (asp 9).
- (6) Regulations made by the Department by virtue of subsection (4)(a) may include provisions amending or repealing Northern Ireland legislation.
- (7) Before making any regulations under this section, the appropriate authority is to consult such persons or bodies as it may consider appropriate.
- (8) It is immaterial for the purposes of subsection (7) whether consultation is carried out before or after the coming into force of this section.
- (9) In this section “the appropriate authority” means –
  - (a) in relation to England and Wales and Scotland, the Secretary of State;
  - (b) in relation to Northern Ireland, the Department.



## **220 Regulations made by Secretary of State: consultation with devolved authorities**

- (1) This section applies where—
  - (a) the Secretary of State proposes to make regulations under section 219 by virtue of any of Parts 3, 4, 5, 7, 8, 10, 11 and 12 of Schedule 18, and
  - (b) the regulations contain—
    - (i) in the case of regulations made by virtue of Part 3, 4, 7, 8, 10, 11 or 12 of Schedule 18, provision within Scottish devolved competence;
    - (ii) in the case of regulations made by virtue of Part 5 of Schedule 18, provision within Welsh devolved competence.
- (2) Before making the regulations, the Secretary of State must give notice—
  - (a) stating that the Secretary of State proposes to make the regulations,
  - (b) setting out or describing—
    - (i) so far as the regulations are made as mentioned in subsection (1)(b)(i), the provision within Scottish devolved competence,
    - (ii) so far as the regulations are made as mentioned in subsection (1)(b)(ii), the provision within Welsh devolved competence, and
  - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to those provisions,and must consider any representations duly made and not withdrawn.
- (3) A notice under subsection (2) must be given to each relevant devolved authority, that is to say—
  - (a) the Scottish Ministers, if the regulations are made as mentioned in subsection (1)(b)(i) and contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, if the regulations are made as mentioned in subsection (1)(b)(ii) and contain provision within Welsh devolved competence.
- (4) The Secretary of State need not wait until the end of the period specified under subsection (2)(c) before making regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provision referred to in subsection (2)(b)(i) or (ii) (as the case may be).
- (5) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provision referred to in subsection (2)(b)(i) or (ii) (as the case may be) have been taken into account in the regulations.
- (6) For the purposes of this section, provision—

- (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
- (b) is within Welsh devolved competence if it 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).

## **221 Heat networks regulations: other provision about procedure**

- (1) The first regulations to be made by the Secretary of State under section 219 are subject to the affirmative procedure.
- (2) The following regulations made by the Secretary of State are also subject to the affirmative procedure –
  - (a) regulations under section 219 which are made by virtue of –
    - (i) paragraph 12(1) of Schedule 18,
    - (ii) paragraph 23(1) of Schedule 18,
    - (iii) paragraph 32 of Schedule 18,
    - (iv) any provision of Part 8 or 9 of Schedule 18, or
    - (v) paragraph 56 of Schedule 18;
  - (b) regulations under section 219 which create an offence or provide for an increase in the penalty for an existing offence;
  - (c) regulations under section 219 which amend or repeal any provision of legislation mentioned in section 219(5).
- (3) Any other regulations made by the Secretary of State under section 219 are subject to the negative procedure.
- (4) The power of the Department to make regulations under section 219 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (5) The first regulations to be made by the Department under section 219 may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (6) Regulations made by the Department under section 219 containing any of the following regulations (whether alone or with other regulations) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly –
  - (a) regulations under section 219 which are made by virtue of –
    - (i) paragraph 12(1) of Schedule 18,
    - (ii) paragraph 32 of Schedule 18,
    - (iii) any provision of Part 8 or 9 of Schedule 18, or
    - (iv) paragraph 56 of Schedule 18;

- (b) regulations under section 219 which create an offence or provide for an increase in the penalty for an existing offence;
  - (c) regulations under section 219 which amend or repeal any provision of Northern Ireland legislation.
- (7) Any other regulations made by the Department under section 219 are subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).

## **222 Recovery of costs by GEMA and NIAUR**

- (1) The conditions of a licence under section 7, 7ZA, 7A or 7AB of the Gas Act 1986 or section 6 of the Electricity Act 1989 may require payment by the licence holder of sums relating to costs within subsection (2).
- (2) The costs within this subsection are –
- (a) costs of the GEMA –
    - (i) under regulations made under section 219, or
    - (ii) in its capacity as the licensing authority for the purposes of the Heat Networks (Scotland) Act 2021 (asp 9), if the GEMA is designated as such under section 223(1) of this Act,
  - (b) costs of a person other than the GEMA in carrying out, by virtue of section 217(2) or paragraph 5 of Schedule 18, functions of the Regulator,
  - (c) costs of holders of licences issued under Part 4 of Schedule 18 (code manager licences),
  - (d) costs incurred by the Secretary of State in giving financial assistance under regulations made by virtue of paragraph 50 of Schedule 18 (special administration regime),
  - (e) costs incurred by a person or body in providing, or arranging for the provision of, consumer advocacy and advice in relation to heat network consumers, and
  - (f) costs not within any of paragraphs (a) to (e) incurred by a person in exercising a function in relation to heat networks in England, Wales or Scotland (whether by virtue of regulations under section 219 or otherwise).
- (3) The conditions of a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) may require payment by the licence holder of sums relating to costs within subsection (4).
- (4) The costs within this subsection are –
- (a) costs of the NIAUR under regulations made under section 219,
  - (b) costs of a person other than the NIAUR in carrying out, by virtue of section 217(3) or paragraph 5 of Schedule 18, functions of the Regulator,
  - (c) costs incurred by the Department in giving financial assistance under regulations made by virtue of paragraph 50 of Schedule 18 (special administration regime),

- (d) costs incurred by a person or body in providing, or arranging for the provision of, consumer advocacy and advice in relation to heat network consumers, and
- (e) costs not within any of paragraphs (a) to (d) incurred by a person in exercising a function in relation to heat networks in Northern Ireland (whether by virtue of regulations under section 219 or otherwise).

### **223 Heat networks: licensing authority in Scotland**

- (1) The Secretary of State may by regulations designate the GEMA as the licensing authority for the purposes of the Heat Networks (Scotland) Act 2021 (asp 9).
- (2) Regulations under subsection (1) are subject to the affirmative procedure.
- (3) In section 4 of the Heat Networks (Scotland) Act 2021 (meaning of “licensing authority”) –
  - (a) at the beginning insert “(1)”;
  - (b) after the subsection (1) so formed insert –
    - “(2) Subsection (1) is subject to subsection (3).
    - (3) If the Secretary of State designates the Gas and Electricity Markets Authority as the licensing authority for the purposes of this Act by regulations under section 223(1) of the Energy Act 2023, references in this Act to the licensing authority are references to the Gas and Electricity Markets Authority.”

### **224 Heat networks: enforcement in Scotland**

- (1) The Secretary of State may by regulations amend the Heat Networks (Scotland) Act 2021 for the purpose of making provision about monitoring compliance with, or enforcement of, conditions of heat networks licences issued under section 5(5) of that Act.
- (2) Regulations under this section may, in particular, make provision corresponding to the provision described in paragraphs 6 to 10, 37 to 40, 43, 72 and 73 of Schedule 18.
- (3) Regulations under this section must provide for an offence created by the regulations –
  - (a) to be triable only summarily, and
  - (b) to be punishable on conviction with imprisonment for a period not exceeding 3 months or a fine not exceeding level 1 on the standard scale (or both).
- (4) The Secretary of State may make regulations under this section only if the Secretary of State has also made regulations under section 223(1) (and those regulations are still in force).
- (5) Regulations under this section are subject to the affirmative procedure.

## 225 Interpretation of Chapter 1

In this Chapter –

- “the Department” means the Department for the Economy in Northern Ireland;
- “heat network” has the meaning given by section 216;
- “the NIAUR” means the Northern Ireland Authority for Utility Regulation;
- “the Regulator” has the meaning given by section 217;
- “relevant heat network” has the meaning given by section 216.

## CHAPTER 2

### HEAT NETWORK ZONES

#### *Zones regulations*

## 226 Regulations about heat network zones

- (1) The Secretary of State may by regulations make provision about heat network zones (“zones regulations”).
- (2) A heat network zone is an area in England that is designated as such under zones regulations by virtue of being appropriate for the construction and operation of one or more district heat networks.
- (3) The provision made by this Chapter is without prejudice to the generality of subsection (1).
- (4) Subject to subsection (5), zones regulations are subject to the affirmative procedure.
- (5) Zones regulations which make provision of the kind described in section 229(1)(c) or (4)(c) or 230(2)(c) or (4) (and no other provision) are subject to the negative procedure.
- (6) If, apart from this section, a draft of an instrument containing zones 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.

#### *Heat Network Zones Authority and zone coordinators*

## 227 Heat Network Zones Authority

- (1) Zones regulations may designate a person to act as the Heat Network Zones Authority (referred to in this Chapter as “the Authority”).
- (2) The purpose of the Authority is to carry out functions in relation to heat network zones conferred on it by zones regulations.

- (3) The Secretary of State may, but need not, be designated for the purposes of subsection (1).
- (4) Zones regulations may provide for the Authority to delegate any of its functions to persons specified in the regulations.

## **228 Zone coordinators**

- (1) Zones regulations may make provision about zone coordinators.
- (2) The purpose of zone coordinators is to carry out functions conferred on them by zones regulations in relation to particular heat network zones.
- (3) Regulations made by virtue of subsection (1) may –
  - (a) make provision for, or in connection with, the designation of a person as a zone coordinator by a local authority for its area, or a part or parts of its area (including the local authority designating itself);
  - (b) make provision for, or in connection with, the designation of a person as a zone coordinator by two or more local authorities for their areas or parts of their areas (including the local authorities designating one of themselves);
  - (c) make provision for, or in connection with, the establishment of a body by one or more local authorities which is intended to be designated as a zone coordinator in accordance with regulations made by virtue of paragraph (a) or (b);
  - (d) make provision about the funding of zone coordinators;
  - (e) make provision about the governance of zone coordinators;
  - (f) make provision about zone coordinators cooperating with the Regulator in relation to zone coordinators' functions or the Regulator's functions;
  - (g) make provision for the Authority to perform any function of a zone coordinator in circumstances, and subject to requirements, specified by the regulations;
  - (h) make provision for the Authority to direct a zone coordinator to perform any of its functions in the manner the Authority considers appropriate in circumstances, and subject to requirements, specified by the regulations.
- (4) Regulations made by virtue of subsection (3)(a) and (b) may make provision for the Authority –
  - (a) to require a local authority, or two or more local authorities, to designate a person as a zone coordinator in circumstances, and subject to requirements, specified by the regulations;
  - (b) to designate a person as a zone coordinator where a local authority (or local authorities) fail to comply with a requirement imposed by virtue of paragraph (a).
- (5) In this section, “local authority” means –
  - (a) a county, district or parish council in England;
  - (b) a London borough council;

- (c) the Common Council of the City of London;
- (d) the Council of the Isles of Scilly;
- (e) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;
- (f) another body or person specified by zones regulations.

*Identification, designation and review of zones*

**229 Identification, designation and review of zones**

- (1) Zones regulations may make provision for, or in connection with—
  - (a) the identification by the Authority and zone coordinators of areas which are appropriate for the construction and operation of one or more district heat networks,
  - (b) the designation of those areas as heat network zones by zone coordinators or the Authority, and
  - (c) the review by zone coordinators, or the Authority, of the designation of areas as heat network zones.
- (2) Regulations made by virtue of subsection (1)(a) must require the identification of areas to be carried out in accordance with the zoning methodology established under section 230.
- (3) Regulations made by virtue of subsection (1)(b) may—
  - (a) make provision about the variation or revocation of designations by zone coordinators or the Authority;
  - (b) make provision about procedure;
  - (c) make provision about the publication of designations (and the variation or revocation of designations);
  - (d) require zone coordinators to notify the Authority of designations (and the variation or revocation of designations);
  - (e) make provision for, or in connection with, the maintenance by the Authority of a register of areas designated as heat network zones.
- (4) Regulations made by virtue of subsection (3)(a) may, in particular—
  - (a) specify the circumstances in which a zone coordinator or the Authority may vary or revoke a designation;
  - (b) specify the factors a zone coordinator or the Authority may or must take into consideration in determining whether to vary or revoke a designation;
  - (c) impose on zone coordinators or the Authority requirements as to consultation.
- (5) Regulations made by virtue of subsection (1)(c) may—
  - (a) make provision about the circumstances in which reviews must be carried out and the frequency of reviews;

- (b) set out the criteria against which the designation of areas as heat network zones is to be reviewed;
- (c) impose on zone coordinators or the Authority requirements as to consultation;
- (d) make provision requiring reports of reviews to be published.

### **230 Zoning methodology**

- (1) Zones regulations may make provision for a methodology (to be known as “the zoning methodology”) for the Authority and zone coordinators to identify areas which are appropriate for the construction and operation of one or more district heat networks.
- (2) Regulations made by virtue of subsection (1) may include in the zoning methodology –
  - (a) the criteria for determining whether an area is appropriate;
  - (b) the roles of the Authority and zone coordinators;
  - (c) requirements as to consultation;
  - (d) provision about how the identification of areas is to be recorded, including provision about the use of maps;
  - (e) requirements as to publication of areas which have been identified.
- (3) Zones regulations may make provision for the Authority to issue guidance in relation to the zoning methodology.
- (4) Zones regulations may make provision about the Secretary of State carrying out reviews of the zoning methodology.
- (5) Regulations made by virtue of subsection (4) may –
  - (a) make provision about the circumstances in which reviews must be carried out and the frequency of reviews;
  - (b) set out the criteria against which the zoning methodology is to be reviewed;
  - (c) impose on the Secretary of State requirements as to consultation;
  - (d) make provision for the Authority or zone coordinators to consult persons on behalf of the Secretary of State;
  - (e) make provision requiring reports of reviews to be published.

### **231 Requests for information in connection with section 229 or 230**

- (1) Zones regulations may make provision about the Authority and zone coordinators requesting information in connection with their functions under regulations made by virtue of section 229 or 230.
- (2) Regulations made by virtue of subsection (1) may provide for –
  - (a) the Authority or a zone coordinator to request information by notice from a person of a description specified in the regulations;



- (b) the requested information to be provided within the period, and in the form and manner, specified in the notice;
- (c) the Authority or zone coordinator to impose a penalty on a person for not complying with the notice;
- (d) the disclosing of information requested by the zone coordinator not to breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed);
- (e) a request for information not to require a disclosure of information if disclosure would contravene the data protection legislation (but for a requirement imposed by virtue of regulations made by virtue of subsection (1) to be taken into account in determining whether a disclosure would do so);
- (f) zone coordinators to delegate functions conferred on them by regulations made by virtue of subsection (1) to a description of person, and in the circumstances and subject to the conditions, specified by the regulations.

*Heat networks within zones*

**232 Heat networks within zones**

- (1) Zones regulations may make provision about heat networks within heat network zones.
- (2) Regulations made by virtue of subsection (1) may, in particular—
  - (a) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that buildings of types specified by the regulations situated within a heat network zone are connected to a district heat network within the zone—
    - (i) in circumstances specified by the regulations, and
    - (ii) within a time specified by, or determined in accordance with, the regulations;
  - (b) make provision about zone coordinators giving notice of requirements imposed by regulations made by virtue of paragraph (a) to persons on whom requirements are imposed;
  - (c) make provision about the grant by zone coordinators of exemptions from requirements imposed by regulations made by virtue of paragraph (a);
  - (d) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that buildings of types specified by the regulations situated within a heat network zone are installed with communal heat networks—
    - (i) in circumstances specified by the regulations,
    - (ii) within a time specified by, or determined in accordance with, the regulations, and

- 
- (iii) in a manner that would allow the communal heat networks to be connected to a district heat network;
  - (e) make provision for, or in connection with, the requesting of information from a person, by notice given by a zone coordinator, about a source of thermal energy located on the person's premises that may be suitable to supply a district heat network within a heat network zone;
  - (f) make provision for, or in connection with, the imposition of a requirement on a person, by notice given by a zone coordinator, to allow the installation of equipment on the person's premises, and the connection of that equipment to a district heat network, to enable a source of thermal energy located on the premises to supply a district heat network within a heat network zone;
  - (g) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that machinery and other equipment of types specified by the regulations are designed, and installed on premises, in a manner which would enable thermal energy generated by the machinery or other equipment to be supplied to a district heat network within a heat network zone;
  - (h) make provision about the terms on which thermal energy is supplied to a district heat network in pursuance of regulations made by virtue of paragraph (f) or (g) (including in particular provision about the amount that may be charged);
  - (i) make provision for, or in connection with, the setting by zone coordinators of limits on emissions of targeted greenhouse gases resulting from district heat networks within heat network zones;
  - (j) make provision about zone coordinators affording a grace period to a person who is required to comply with a limit imposed under regulations made by virtue of paragraph (i).
- (3) Regulations made by virtue of subsection (2)(c) may –
- (a) specify the criteria in accordance with which a zone coordinator is to determine an application for an exemption;
  - (b) make provision about procedure;
  - (c) specify how, and on what grounds, a refusal to grant an exemption may be appealed.
- (4) Regulations made by virtue of subsection (2)(e) may –
- (a) specify the information about the source of thermal energy that may be requested;
  - (b) require the requested information to be provided within the period, and in the form and manner, specified in the notice;
  - (c) provide for the disclosing of information requested by the zone coordinator not to breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed);
  - (d) provide for a request for information not to require a disclosure of information if disclosure would contravene the data protection

- legislation (but for a requirement imposed by virtue of regulations made by virtue of subsection (2)(e) to be taken into account in determining whether a disclosure would do so);
- (e) provide for zone coordinators to delegate functions conferred on them by regulations made by virtue of subsection (2)(e) to a description of person, and in circumstances and subject to conditions, specified by the regulations.
- (5) Regulations made by virtue of subsection (2)(f) may –
    - (a) specify the types of sources of thermal energy in respect of which a zone coordinator may or must impose a requirement on a person and in what circumstances;
    - (b) make provision about the period within which a person must comply with a requirement;
    - (c) specify how, and on what grounds, a requirement imposed on a person in respect of a source of thermal energy may be appealed.
  - (6) Regulations made by virtue of subsection (2)(i) may –
    - (a) specify the manner and form in which the limits are to be set;
    - (b) require zone coordinators to obtain the consent of the Authority before setting a limit.
  - (7) Regulations made by virtue of subsection (2)(j) may –
    - (a) specify the circumstances in which a zone coordinator may or must afford a person a grace period;
    - (b) make provision for the Authority to issue guidance about grace periods;
    - (c) make provision about procedure;
    - (d) specify how, and on what grounds, a refusal to grant a grace period may be appealed.
  - (8) In subsection (2)(d), “communal heat network” has the meaning given by section 217(2).
  - (9) In subsection (2)(i), “emissions” and “targeted greenhouse gas” have the same meaning as in the Climate Change Act 2008 (see sections 24 and 97 of that Act).
  - (10) In subsections (2)(j) and (7), “grace period” means a period to comply before enforcement action is taken.

### **233 Delivery of district heat networks within zones**

- (1) Zones regulations may make provision about the delivery of district heat networks within heat network zones.
- (2) Regulations made by virtue of subsection (1) may, in particular –
  - (a) make provision about zone coordinators deciding –

- (i) what district heat networks may be constructed and operated within a heat network zone;
    - (ii) who will design, construct, operate and maintain district heat networks within heat network zones;
  - (b) make provision about zone coordinators designing, constructing, operating or maintaining district heat networks within heat network zones, or arranging for their design, construction, operation or maintenance;
  - (c) make provision about the giving of advice by the Authority to zone coordinators about the delivery of district heat networks within heat network zones.
- (3) Regulations made by virtue of subsection (2)(a)(ii) may –
  - (a) make provision for the construction, operation or maintenance of district heat networks within heat network zones to be subject to the consent of zone coordinators;
  - (b) make provision for the grant by zone coordinators of an exclusive right to design, construct, operate or maintain district heat networks within heat network zones or parts of heat network zones.
- (4) Regulations made by virtue of subsection (3)(b) may –
  - (a) make provision for the Authority to publish the standard conditions that zone coordinators must use when granting an exclusive right (and for the Authority to amend or replace the standard conditions);
  - (b) specify the circumstances in which zone coordinators may grant an exclusive right.
- (5) Regulations made by virtue of subsection (2)(a) may –
  - (a) specify the manner and form of zone coordinators' decisions under regulations made by virtue of subsection (2)(a);
  - (b) make provision for a zone coordinator to vary or revoke a decision;
  - (c) specify considerations a zone coordinator may or must take into account when making, varying or revoking a decision;
  - (d) make provision about procedure;
  - (e) make provision about the publication of a decision (or the variation or revocation of a decision);
  - (f) specify how, and on what grounds, a decision, or a variation or revocation of a decision, may be appealed;
  - (g) make provision for a zone coordinator to lose the power to decide the matters specified in subsection (2)(a)(i) and (ii), and instead for those matters to no longer be subject to the zone coordinator's control, if the zone coordinator does not take steps specified by the regulations within a time specified by the regulations.

### *Enforcement*

#### **234 Enforcement of heat network zone requirements**

- (1) Zones regulations may make provision about the enforcement of heat network zone requirements.
- (2) Regulations made by virtue of subsection (1) may, in particular, provide for a zone coordinator –
  - (a) to issue a notice requiring a person to demonstrate compliance with a heat network zone requirement where the zone coordinator suspects that the person is not complying with the requirement;
  - (b) to issue a notice specifying steps a person is required to take in order to comply with a heat network zone requirement where the zone coordinator is satisfied that the person is not complying with the requirement;
  - (c) to impose a penalty on a person for the contravention of –
    - (i) a heat network zone requirement, or
    - (ii) a requirement imposed by a notice under regulations made by virtue of paragraph (a) or (b).
- (3) Regulations made by virtue of subsection (2)(a) or (b) may –
  - (a) make provision about the period within which a person must comply with a notice;
  - (b) make provision about procedure;
  - (c) specify how, and on what grounds, a notice may be appealed.
- (4) In this section, “heat network zone requirement” means a requirement imposed by or by virtue of regulations made by virtue of section 232 or 233.

#### **235 Penalties**

- (1) Zones regulations made by virtue of section 231(2)(c) or 234(2)(c) may –
  - (a) make provision about the maximum amount that may be imposed by way of penalty;
  - (b) make provision about procedure;
  - (c) specify how a penalty may be recovered;
  - (d) require sums received by way of penalty to be paid into the Consolidated Fund or to persons specified by the regulations.
- (2) Zones regulations made by virtue of section 231(2)(c) or 234(2)(c) must include provision for a right of appeal against the imposition of a penalty.
- (3) Zones regulations may provide for the publication of guidance by the Authority with respect to –
  - (a) the imposition of penalties under regulations made by virtue of section 231(2)(c) or 234(2)(c), and
  - (b) the determination of their amount.

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*Records, information and reporting***236 Records, information and reporting**

- (1) Zones regulations may make provision requiring zone coordinators to collect information specified by the regulations which—
  - (a) is relevant to identifying areas which are appropriate for the construction and operation of one or more district heat networks, or
  - (b) relates to areas designated as heat network zones.
- (2) Zones regulations may make provision requiring zone coordinators to maintain records of—
  - (a) information provided to zone coordinators in response to requests for information made by zone coordinators under regulations made by virtue of section 231 or 232(2)(e);
  - (b) information zone coordinators are required to collect by regulations made by virtue of subsection (1) of this section;
  - (c) other information provided to, collected by, or otherwise brought into the possession of zone coordinators by virtue of their functions under zones regulations.
- (3) Zones regulations may make provision enabling or requiring zone coordinators to provide information specified by the regulations from their records to—
  - (a) to other zone coordinators;
  - (b) the Authority;
  - (c) the Regulator.
- (4) Zone regulations may require the Authority to maintain records of—
  - (a) information provided to the Authority in response to requests for information made by the Authority under regulations made by virtue of section 231;
  - (b) information provided by zone coordinators to the Authority in accordance with regulations made by virtue of subsection (3) of this section;
  - (c) other information provided to, collected by, or otherwise brought into the possession of the Authority by virtue of its functions under zones regulations.
- (5) Zones regulations may make provision enabling or requiring the Authority to provide information specified by the regulations from its records to—
  - (a) zone coordinators;
  - (b) the Regulator.
- (6) Zones regulations may make provision—
  - (a) for the disclosure of information by a zone coordinator or the Authority in accordance with regulations made by virtue of subsection (3) or (5) not to breach any obligation of confidence owed by the zone

- coordinator or the Authority or any other restriction on the disclosure of information (however imposed);
- (b) for regulations made by virtue of subsection (3) or (5) not to authorise or require disclosure of information if disclosure would contravene the data protection legislation (but for a power conferred, or requirement imposed, by regulations made by virtue of subsection (3) or (5) to be taken into account in determining whether a disclosure would do so).

### *Interpretation*

## **237 Interpretation of Chapter 2**

In this Chapter –

- “the Authority” means the person designated as the Heat Network Zones Authority by regulations made by virtue of section 227(1);
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- “district heat network” has the meaning given by section 216(2);
- “heat network” has the meaning given by section 216(2);
- “heat network zone” has the meaning given by section 226(2);
- “the Regulator” has the meaning given by section 217(1)(a);
- “zone coordinator” means a person designated as such under regulations made by virtue of section 228(3)(a);
- “zones regulations” means regulations under section 226;
- “the zoning methodology” has the meaning given by section 230(1).

## **PART 9**

### **ENERGY SMART APPLIANCES AND LOAD CONTROL**

#### **CHAPTER 1**

##### **INTRODUCTORY**

## **238 Energy smart appliances and load control**

- (1) The following definitions apply for the purposes of this Part.
- (2) “Energy smart appliance” means an appliance which is capable of adjusting the immediate or future flow of electricity into or out of itself or another appliance in response to a load control signal; and includes any software or other systems which enable or facilitate the adjustment to be made in response to the signal.
- (3) The functionality described in subsection (2) is referred to as the “energy smart function”.

- (4) “Load control signal” means a digital communication sent via a relevant electronic communications network to an energy smart appliance for the purpose of causing or otherwise facilitating such an adjustment.
- (5) For the purposes of subsection (2) an adjustment to the flow of electricity into or out of an appliance is made in response to a load control signal whether it is made in response to –
  - (a) the sending of the signal, or
  - (b) the sending of the signal and one or more additional factors.
- (6) The sending of a load control signal to an energy smart appliance is referred to as “load control”.
- (7) Regulations under section 239, excluding regulations under section 239(6), are referred to as “energy smart regulations”.

## CHAPTER 2

### ENERGY SMART APPLIANCES

#### **239 Energy smart regulations**

- (1) The Secretary of State may by regulations make provision about energy smart appliances that are –
  - (a) capable of being used in connection with any of the purposes specified in subsection (2), or
  - (b) charge points (for electric vehicles).
- (2) The specified purposes are –
  - (a) refrigeration;
  - (b) cleaning tableware;
  - (c) washing or drying textiles;
  - (d) storing energy that –
    - (i) was converted from electricity, and
    - (ii) is stored for the purpose of its future reversion into electricity;
  - (e) heating;
  - (f) air conditioning or ventilation.
- (3) In making such regulations, the Secretary of State must, in particular, have regard to the desirability of ensuring that –
  - (a) the energy smart function or compatibility with that function is incorporated into appliances in a manner that is compliant with the regulations,
  - (b) the energy smart function does not undermine the delivery of a consistent and stable supply of electricity,
  - (c) the energy smart function in any energy smart appliance is capable of operating in response to load control signals from any person carrying out load control, and



- (d) communications, software, systems and personal and other data used in connection with energy smart appliances are secure or otherwise protected, for purposes including the protection of end-users.
- (4) Such regulations may, in particular –
  - (a) make provision about all energy smart appliances or any description of energy smart appliances;
  - (b) impose technical or other requirements in relation to such appliances, including requirements to display or otherwise provide information about appliances;
  - (c) prohibit the placing on the market of, or other activities in connection with, relevant appliances (see section 240(3));
  - (d) make provision about the recall of appliances to prevent, or in response to, non-compliance with the regulations;
  - (e) make provision for the Secretary of State to issue guidance about prohibitions or requirements imposed by or under the regulations;
  - (f) provide for the enforcement of the regulations.
- (5) Such regulations may impose prohibitions or requirements on any person, including any person making, supplying, importing or distributing energy smart appliances or carrying out load control (but see section 240(6)).
- (6) The Secretary of State may by regulations –
  - (a) make provision about the meaning that “relevant electronic communications network” is to have for the purposes of this Part;
  - (b) amend the list of purposes in subsection (2).
- (7) In this Chapter, “charge point” has the same meaning as in Part 2 of the Automated and Electric Vehicles Act 2018 (see section 9 of that Act).

#### **240 Prohibitions and requirements: supplemental**

- (1) Requirements imposed by energy smart regulations may, in particular, refer or relate to –
  - (a) published documents and standards (as they have effect from time to time);
  - (b) a list, published by the Secretary of State, of such documents and standards;
  - (c) requirements (however described) imposed by or under any enactment or Act of the Scottish Parliament.
- (2) Prohibitions imposed by energy smart regulations may, in particular, relate to –
  - (a) the providing of load control for appliances that are not compliant with the regulations;
  - (b) the modification of appliances in a manner that would cause them to cease to be compliant with the regulations.

- (3) The following kinds of appliances are “relevant appliances” for the purposes of section 239(4)(c) –
  - (a) energy smart appliances that are not compliant with requirements or particular requirements of energy smart regulations;
  - (b) appliances without the energy smart function, or that are not compatible with the energy smart function of another appliance, and are –
    - (i) charge points (for electric vehicles), or
    - (ii) electrical heating appliances.
- (4) The reference in subsection (3)(b)(ii) to electrical heating appliances includes a reference to heat pumps.
- (5) In this Chapter, “modification of appliances” has the meaning given by energy smart regulations.
- (6) Energy smart regulations may not provide for a prohibition to be contravened by an end-user of an appliance (in their capacity as such) or for such a person to be enforced against as described in section 241 or 242.

## **241 Enforcement**

- (1) Provision for the enforcement of energy smart regulations may, in particular, include provision of a kind described in this section, section 242 or section 243.
- (2) Energy smart regulations may include provision to ensure compliance with any prohibition or requirement imposed by or under the regulations, including provision –
  - (a) designating authorities to carry out enforcement (referred to in this Chapter as “enforcement authorities”);
  - (b) requiring persons to –
    - (i) maintain information;
    - (ii) monitor compliance and report non-compliance;
    - (iii) take specified steps to remedy non-compliance;
  - (c) requiring persons to supply evidence of their compliance to enforcement authorities;
  - (d) conferring powers of entry, including by reasonable force;
  - (e) conferring powers of inspection, search and seizure;
  - (f) conferring powers to require the production of information or things held at, or electronically accessible from, entered premises;
  - (g) conferring powers to enable the testing of energy smart appliances by enforcement authorities, including powers to require the provision of sample appliances and powers to make test purchases;
  - (h) conferring functions, including functions involving the exercise of a discretion.

- (3) Regulations conferring powers described in subsection (2)(d), (e) or (f) must provide that persons exercising those powers are to produce evidence of their authority if required to do so.
- (4) The regulations may not allow entry to premises by reasonable force without a warrant issued by a justice of the peace or, in Scotland, a sheriff or summary sheriff.
- (5) Energy smart regulations may allow enforcement authorities to impose requirements by written notice on persons to –
  - (a) produce information or things;
  - (b) make appliances compliant with energy smart regulations;
  - (c) stop or limit –
    - (i) the placing on the market of, or other activities in connection with, appliances,
    - (ii) the providing of load control to appliances, or
    - (iii) the modification of appliances,for the purpose of preventing or mitigating non-compliance with energy smart regulations;
  - (d) recall appliances to prevent, or in response to, non-compliance with energy smart regulations.
- (6) Regulations that allow an enforcement authority to impose requirements may also provide for –
  - (a) the authority to apply to a court or tribunal in connection with a failure to comply with a requirement, and
  - (b) the court or tribunal, if satisfied that such a failure has occurred, to make an order for the purpose of securing compliance with the requirement.
- (7) Such an order may require a person to take, or refrain from taking, steps specified in the order (including at, by or until specified times).
- (8) Energy smart regulations may make provision to enable an enforcement authority to accept an enforcement undertaking from a person where the authority has reasonable grounds to suspect that the person has failed to comply with any prohibition or requirement imposed by or under the regulations.
- (9) An “enforcement undertaking” is an undertaking to take such action to secure compliance with the regulations as may be specified in the undertaking within such period as may be so specified.
- (10) Provision made by virtue of subsection (8) must include provision that unless the person from whom the undertaking was accepted has failed to comply with the undertaking or any part of it –
  - (a) that person may not at any time be convicted of an offence in respect of the act or omission to which the undertaking relates, and

- (b) the enforcement authority may not impose on that person any penalty which it would otherwise have power to impose under the regulations in respect of that act or omission.
- (11) Provision made by virtue of subsection (8) may include any provision of a kind mentioned in section 50(5) of the Regulatory Enforcement and Sanctions Act 2008.
- (12) The Secretary of State may make payments or provide other resources to, or in respect of, enforcement authorities in connection with the exercise of functions under energy smart regulations.
- (13) Energy smart regulations may provide for an enforcement authority to issue guidance about the enforcement of the regulations and the exercise by the authority of its functions under the regulations.

#### **242 Sanctions, offences and recovery of costs**

- (1) Energy smart regulations may provide for sanctions to be imposed on persons in relation to—
  - (a) non-compliance with a prohibition or requirement imposed by or under such regulations;
  - (b) providing false or misleading information in relation to any such prohibition or requirement.
- (2) The regulations may, in particular, provide for the imposition of civil penalties, including graduated or multiple penalties in connection with a continuous or serious act or omission.
- (3) Energy smart regulations may create offences relating to—
  - (a) contraventions (by act or omission) of requirements imposed by enforcement authorities;
  - (b) knowingly giving false or misleading information to enforcement authorities;
  - (c) the obstruction (by act or omission) of persons acting on behalf of enforcement authorities;
  - (d) the impersonation of persons acting on behalf of enforcement authorities.
- (4) Regulations which create an offence must provide for the offence to be triable only summarily.
- (5) Regulations may not provide for an offence to be punishable with imprisonment.
- (6) Regulations may provide for enforcement authorities to recover costs.

### **243 Appeals against enforcement action**

- (1) Energy smart regulations that provide for the imposition of a requirement or civil penalty by an enforcement authority must include provision for a right of appeal to a court or tribunal against that requirement or penalty.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the requirement or penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (3) In relation to the imposition of a requirement, the regulations may provide for persons other than the person against whom the requirement was imposed to also have a right of appeal.
- (4) The provision referred to in subsection (2)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm or withdraw the requirement or penalty;
  - (b) to vary or remove a part of the requirement;
  - (c) to vary the amount of the penalty;
  - (d) to award costs or, in Scotland, expenses.
- (5) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (2)(a), (c), (e) or (f), the regulations may revoke or amend any subordinate legislation.
- (6) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under—
  - (a) an Act of the Scottish Parliament;
  - (b) a Measure or Act of the Senedd Cymru.

### **244 Regulations: procedure and supplemental**

- (1) Regulations under section 239 may provide for exemptions or exceptions.
- (2) Energy smart regulations may make provision about the sharing of information between an enforcement authority and the GEMA for the purposes of their functions in relation to energy smart appliances and load control.
- (3) The Secretary of State must consult such persons as the Secretary of State thinks fit before making regulations under section 239 that—
  - (a) make a description of appliance subject to energy smart regulations;
  - (b) amend the list of purposes in section 239(2).

- (4) Subsection (3) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (5) The first energy smart regulations, and any regulations under section 239 that (with or without other provision) amend the list of purposes in section 239(2) or create a criminal offence (see section 242), are subject to the affirmative procedure.
- (6) Energy smart regulations that are not within subsection (5) are subject to the made affirmative procedure if they –
  - (a) are the first energy smart regulations to make provision about a particular description of energy smart appliance,
  - (b) make provision by virtue of section 239(4)(b) imposing requirements of a kind not previously imposed by energy smart regulations,
  - (c) make provision by virtue of section 240(1)(a) or (b) by reference or in relation to a published document, standard or list (as the case may be) in respect of which such provision has not previously been made,
  - (d) confer new powers for the enforcement of energy smart regulations, or
  - (e) make provision by virtue of section 242(2) for the imposition of new civil penalties.
- (7) A revised version of a published document, standard or list is to be disregarded for the purposes of subsection (6)(c) if provision has previously been made in respect of the document, standard or list by virtue of section 240(1)(a) or (b) (as the case may be).
- (8) Any other regulations under section 239 are subject to the negative procedure.

### CHAPTER 3

#### LICENSING OF LOAD CONTROL

#### **245 Power to amend licence conditions etc: load control**

- (1) The Secretary of State may modify –
  - (a) the conditions of a licence granted under section 6(1) of the Electricity Act 1989;
  - (b) the standard conditions incorporated in such licences by virtue of section 8A of that Act;
  - (c) the conditions of a licence granted under section 7A(1) or 7AB of the Gas Act 1986;
  - (d) the standard conditions incorporated in such licences by virtue of section 8 of that Act;
  - (e) a document maintained in accordance with the conditions of a licence granted under section 6(1) of the Electricity Act 1989 or section 7A(1) or 7AB of the Gas Act 1986, or an agreement that gives effect to a document so maintained.

- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purposes of facilitating, promoting, ensuring the security of, or otherwise regulating load control or other activities falling within section 56FBA(2) of the Electricity Act 1989.
- (3) Modifications made to the conditions of a licence may include provisions of a kind mentioned in section 7 of the Electricity Act 1989 or section 7B of the Gas Act 1986 (as appropriate) and may in particular –
  - (a) regulate or prohibit the provision of load control in relation to appliances that are not compliant with energy smart regulations or any technical standards specified in or under a condition;
  - (b) regulate the provision of load control in relation to appliances that are compliant with energy smart regulations or any technical standards specified in or under a condition;
  - (c) require the holder of a licence to supply information to the Secretary of State or the GEMA (or both) so as to enable them to assess any matter relating to the purposes mentioned in subsection (2);
  - (d) require the holder of the licence to enter (or refrain from entering) into an agreement of a specified kind, or with a specified person;
  - (e) require the holder of a licence to supply information about tariffs (including to such persons, and in such a format, specified in or under a condition).
- (4) The power conferred by subsection (1) –
  - (a) may be exercised to make different provision in relation to different areas or different classes of customer;
  - (b) 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);
  - (c) may be exercised differently in different cases or circumstances;
  - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (5) The power conferred by subsection (1) may not be exercised after the period of 10 years beginning with the day on which this section comes into force.
- (6) The Secretary of State may, by regulations, extend (or further extend) that period.
- (7) Regulations under subsection (6) –
  - (a) may not extend the period (or any extended period) by more than three years at a time, and
  - (b) are subject to the affirmative procedure.
- (8) In this section “modify” includes remove or fail to incorporate and “modification” is to be construed accordingly.

**246 Power to amend licence conditions etc: procedure**

- (1) Before making a modification, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must specify the date upon which any modification is to have effect.
- (4) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (5) In this section “modification” means a modification under section 245.

**247 Load control: supplemental**

- (1) A modification under section 245 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (2) Where the Secretary of State makes modifications under section 245(1)(b) or (e) of the standard conditions of a licence of any type, 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.

**248 Application of general duties to functions relating to load control**

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (2), of functions conferred on the Secretary of State or the GEMA by or under sections 245 to 247.
- (2) The matters are—
  - (a) activities required to be authorised by gas licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.
- (3) In section 4AA(2)(b) of the Gas Act 1986 (duty to have regard to ability of licence holders to finance obligations) for “or sections 26 to 29 of the Energy



Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010, or sections 245 to 247 of the Energy Act 2023”.

- (4) Sections 3A to 3D of the Electricity Act 1989 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (5), of functions conferred on the Secretary of State or the GEMA by or under sections 245 to 247.
- (5) The matters are –
  - (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.
- (6) In section 3A(2)(b) of the Electricity Act 1989 (duty to have regard to ability of licence holders to finance obligations) for “or the Nuclear Energy (Financing) Act 2022” substitute “, the Nuclear Energy (Financing) Act 2022 or sections 245 to 247 of the Energy Act 2023”.
- (7) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences) –
  - (a) omit the “or” at the end of paragraph (i), and
  - (b) after paragraph (j) insert “or,  
(k) under sections 245 to 247 of the Energy Act 2023.”
- (8) In this section –

“electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities);

“gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities).

## **249 Licensing of activities relating to load control**

Schedule 19, which amends the Electricity Act 1989, provides for the licensing of load control.

### **PART 10**

#### **ENERGY PERFORMANCE OF PREMISES**

## **250 Power to make energy performance regulations**

- (1) The appropriate authority may make regulations for any of these purposes –
  - (a) enabling or requiring the energy usage or energy efficiency of premises to be assessed, certified and publicised;
  - (b) enabling or requiring possible improvements in the energy usage or energy efficiency of premises to be identified and recommended;

- 
- (c) restricting or prohibiting the marketing and disposal of premises on the basis of whether their energy usage or energy efficiency has been assessed, certified or publicised.
- (2) In this Part regulations under this section are referred to as “energy performance regulations”.
- (3) Energy performance regulations may –
- (a) provide for –
    - (i) the regulations to apply to specified descriptions of premises, or
    - (ii) specified descriptions of premises to be excluded from the application of the regulations;
  - (b) confer functions on any person;
  - (c) provide for functions to be exercisable only if specified conditions are met (including conditions as to the eligibility of persons to exercise the functions);
  - (d) provide for the energy usage or energy efficiency of premises to be assessed or certified by reference to information that is obtained, produced or kept otherwise than under energy performance regulations;
  - (e) impose requirements on any person;
  - (f) make provision for the purpose of securing compliance with requirements imposed by or under energy performance regulations (see section 252);
  - (g) authorise or require, or restrict or prohibit, the supply or keeping of information (including authorising or requiring supply or keeping of information that would otherwise be prohibited);
  - (h) provide for the charging of fees.
- (4) A reference in this Part to publicising the energy usage and energy efficiency of premises includes –
- (a) displaying energy performance information in the premises to which it relates;
  - (b) arranging for energy performance information to be entered into a record of such information (including a record that is publicly accessible);
  - (c) reporting energy performance information;
  - (d) supplying energy performance information.
- (5) In this Part –
- “the appropriate authority” means –
    - (a) in relation to England and Wales, the Secretary of State;
    - (b) in relation to Scotland, the Scottish Ministers;
    - (c) in relation to Northern Ireland, the Department;
  - “certified” means certified in accordance with energy performance regulations;

- “the Department” means the Department of Finance in Northern Ireland;
- “disposal of premises” includes leasing or letting of premises;
- “energy performance information” means information about the energy usage or energy efficiency of premises;
- “premises” means—
- (a) a building or a part of a building (including any equipment, systems or facilities used by the building or the part), or
  - (b) any equipment, systems or facilities used by a building or a part of a building;
- “specified” means specified in energy performance regulations.

### **251 Energy performance regulations relating to new premises**

- (1) The power to make energy performance regulations is exercisable in relation to new premises.
- (2) Accordingly, in section 250 (except in the definition of “premises” in section 250(5))—
  - (a) a reference to premises includes new premises;
  - (b) a reference to the energy usage and energy efficiency of premises includes the anticipated energy usage and energy efficiency of new premises.
- (3) In this section “new premises” means premises—
  - (a) which are being constructed or adapted, or
  - (b) which it is proposed to construct or adapt.

### **252 Sanctions**

- (1) The enforcement provision that may be made includes provision—
  - (a) for a person with public functions to enforce a requirement imposed by or under energy performance regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under energy performance regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
  - (d) about the sanctions for obstruction of, or impersonation of, an enforcement authority or a person acting for an enforcement authority.
- (2) Energy performance regulations may provide for the imposition of civil penalties by enforcement authorities in relation to cases falling within subsection (1)(b), (c) or (d); but the regulations may not provide for a civil penalty that exceeds £15,000.
- (3) Energy performance regulations may provide for the creation of criminal offences in relation to cases falling within subsection (1)(b), (c) or (d); but the regulations may not provide for a criminal offence to be punishable—
  - (a) with imprisonment for a term exceeding 12 months, or

- (b) with a fine of more than level 5 on the standard scale.
- (4) Where energy performance regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (5) Provision falling within subsection (4) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award costs.
- (7) The appropriate authority may, by regulations, amend the amount specified in subsection (2) for the purpose of reflecting inflation.
- (8) In this section—
  - “enforcement authority” means a person on whom energy performance regulations confer the function of enforcing any requirement imposed by or under energy performance regulations;
  - “enforcement provision” means provision falling within section 250(3)(f).

### 253 Regulations under Part 10

- (1) Regulations under this Part may amend, repeal or revoke provision made by or under primary legislation.
- (2) Regulations under this Part containing provision within subsection (3) (with or without other provision)—
  - (a) if made by the Secretary of State, are subject to the affirmative procedure (see section 332);
  - (b) if made by the Scottish Ministers, are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));
  - (c) if made by the Department, may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

- (3) The provision within this subsection is—
- (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
  - (b) provision specifying a civil penalty amount (but excluding provision made by virtue of section 252(7) (inflation-related adjustments));
  - (c) provision amending or repealing provision made by primary legislation.
- (4) Any other regulations under this Part—
- (a) if made by the Secretary of State, are subject to the negative procedure (see section 332);
  - (b) if made by the Scottish Ministers, are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10));
  - (c) if made by the Department, are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.)).
- (5) Regulations under this Part—
- (a) may make provision about application to the Crown; and
  - (b) may also, to the extent that they bind the Crown, restrict or modify the application of the regulations.
- (6) A power of the Department to make regulations under this Part is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (7) In this section “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.

## PART 11

### ENERGY SAVINGS OPPORTUNITY SCHEMES

#### *Establishment and application of schemes*

#### **254 Energy savings opportunity schemes**

- (1) The Secretary of State may by regulations (“ESOS regulations”) make provision for the establishment and operation of one or more energy savings opportunity schemes.
- (2) An “energy savings opportunity scheme” is a scheme under which obligations are imposed on undertakings to which the scheme applies for one or more of the ESOS purposes.

- (3) The ESOS purposes are –
  - (a) enabling or requiring the energy consumption for which an undertaking is responsible, or the greenhouse gas emissions resulting from that consumption, to be assessed, audited, reported and published;
  - (b) enabling or requiring possible energy savings or emissions reductions to be identified and recommended;
  - (c) enabling or requiring the costs and benefits of possible energy savings or emissions reductions to be assessed;
  - (d) encouraging or requiring undertakings to produce plans or set targets for achieving energy savings or emissions reductions;
  - (e) encouraging or requiring undertakings to take action for the purpose of achieving energy savings or emissions reductions;
  - (f) encouraging or requiring undertakings to achieve energy savings or emissions reductions.
- (4) An energy saving is a reduction in the energy consumption for which an undertaking is responsible.
- (5) An emissions reduction is a reduction in the greenhouse gas emissions that result from the energy consumption for which an undertaking is responsible (whether or not that consumption is also reduced).
- (6) ESOS regulations may make provision about determining –
  - (a) the energy consumption for which an undertaking is responsible;
  - (b) the greenhouse gas emissions resulting from that consumption.
- (7) ESOS regulations may –
  - (a) impose requirements on any person;
  - (b) confer functions on any person;
  - (c) provide for a person to exercise discretion in dealing with any matter.
- (8) The provision made by this Part is without prejudice to the generality of subsection (1).
- (9) For the purposes of this Part –
  - (a) the scheme established by the Energy Savings Opportunity Scheme Regulations 2014 (S.I. 2014/1643) is to be treated as having been established by provision made under subsection (1);
  - (b) a reference to a scheme administrator includes a reference to a compliance body within the meaning given by those Regulations.

## **255 Application of energy savings opportunity schemes**

- (1) ESOS regulations may provide for –
  - (a) an energy savings opportunity scheme to apply to specified descriptions of undertakings;
  - (b) specified descriptions of undertakings to be excluded from the application of the scheme.

- (2) ESOS regulations may make provision about circumstances in which—
  - (a) two or more participants are to be treated for the purposes of the regulations as if they were a single participant;
  - (b) an obligation imposed under the regulations on one participant is to be treated as if it had been imposed on a different participant.
- (3) The provisions of this Part relating to energy consumption apply to energy consumed by assets located, or activities carried on—
  - (a) wholly or partly in the United Kingdom;
  - (b) wholly or partly in an offshore area;
  - (c) where subsection (4) applies, elsewhere.
- (4) ESOS regulations may make provision about circumstances in which the energy consumption for which a participant is, for the purposes of the regulations, responsible may include energy consumed by—
  - (a) assets located elsewhere than in the United Kingdom or an offshore area, or
  - (b) activities carried on elsewhere than in the United Kingdom or an offshore area.
- (5) The provisions of this Part relating to greenhouse gas emissions apply to the emissions resulting from energy consumption to which this Part applies whether such emissions occur in the United Kingdom, in an offshore area or elsewhere.
- (6) ESOS regulations may make provision about the attribution of energy consumption to participants, including in particular provision about the treatment for the purposes of the regulations of—
  - (a) a participant’s consumption of energy generated by that participant;
  - (b) energy consumption by a person over whom a participant has control or influence;
  - (c) energy consumption shared between a participant and one or more other participants or other persons;
  - (d) energy consumed by assets held on trust by or for a participant.
- (7) In this section, “offshore area” means—
  - (a) waters landward of the seaward limit of the territorial sea adjacent to the United Kingdom,
  - (b) any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964, and
  - (c) any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009,

and includes the places above those areas and the bed and subsoil of the sea within those areas.

*Assessments, energy savings and emissions reductions***256 Requirement for assessment of energy consumption**

- (1) ESOS regulations may require the carrying out of assessments of—
  - (a) a participant’s energy consumption;
  - (b) the greenhouse gas emissions resulting from that consumption.Such an assessment is referred to as an “ESOS assessment”.
- (2) The provision that may be made by virtue of subsection (1) includes in particular provision about—
  - (a) the frequency of ESOS assessments;
  - (b) the period or periods to which assessments must relate;
  - (c) how assessments are to be carried out;
  - (d) the information that must be provided or obtained for the purposes of an assessment;
  - (e) the matters that must be taken into account in an assessment;
  - (f) record-keeping in relation to an assessment.
- (3) ESOS regulations may make provision requiring an ESOS assessment, or specified parts of an ESOS assessment, to be carried out, approved or audited by a person appointed by a participant (referred to as “an assessor”).
- (4) Regulations made by virtue of subsection (1) may include provision enabling or requiring an ESOS assessment to include recommendations relating to energy savings or emissions reductions.
- (5) The provision that may be made by virtue of subsection (4) includes in particular provision about—
  - (a) the matters about which recommendations may, must, or must not be made;
  - (b) the matters that must be taken into account in making a recommendation;
  - (c) the carrying out of a cost-benefit analysis before including a recommendation in a report.
- (6) “Cost-benefit analysis”, in relation to a recommendation or requirement to take action, means—
  - (a) an estimate of the likely costs to a participant of acting in accordance with the recommendation or requirement;
  - (b) an estimate of the energy savings or emissions reductions likely to result from such action;
  - (c) an analysis of the costs referred to in paragraph (a) together with an analysis of the savings or reductions referred to in paragraph (b) and of any other benefits likely to arise.
- (7) ESOS regulations may make provision about the reporting of ESOS assessments, including in particular provision—
  - (a) about the production of written reports;



- (b) about the form and content of such reports;
  - (c) about the dissemination of such reports within an undertaking and between related undertakings.
- (8) ESOS regulations may make provision requiring a participant to notify a scheme administrator of specified matters relating to the participant's compliance with requirements imposed by virtue of this section and may in particular include provision—
  - (a) about the procedure for giving such notice;
  - (b) about the form and content of notices;
  - (c) about the publication of certain information contained within a notice;
  - (d) requiring a participant to justify its choice of assessor.
- (9) ESOS regulations may provide for any requirement imposed by virtue of subsection (1)—
  - (a) to be treated as having been complied with by a participant in specified circumstances, or
  - (b) not to apply to a participant in specified circumstances.

## 257 Assessors

- (1) ESOS regulations may confer functions on an assessor in relation to assessing, monitoring and reporting on compliance with requirements imposed by the regulations.
- (2) ESOS regulations may provide that a participant may only appoint as an assessor a person of a specified description.
- (3) A description may be specified for the purposes of subsection (2) by reference to any criteria, including by reference to—
  - (a) a person's competence, qualifications or experience;
  - (b) a person's inclusion in a designated list or register;
  - (c) a person's membership of a designated body;
  - (d) a person's participation in a designated accreditation scheme;
  - (e) a person's relationship to a participant.
- (4) For the purposes of this section, “designated” means designated by the Secretary of State or a scheme administrator in accordance with ESOS regulations.
- (5) A body may only be designated for the purposes of this section if the body is willing to be so designated.
- (6) ESOS regulations may make provision about—
  - (a) the giving of designations for the purposes of subsection (4);
  - (b) reviewing such designations;
  - (c) circumstances in which such a designation may be removed;
  - (d) maintaining and publishing a list of such designations.

- (7) ESOS regulations may make provision enabling a list or register of persons who may, or who may not, be appointed as an assessor for the purposes of subsection (2) to be maintained by –
  - (a) a designated body;
  - (b) a scheme administrator;
  - (c) the Secretary of State.
- (8) ESOS regulations may confer functions or impose requirements on a person responsible for maintaining a designated list or register and may in particular include provision –
  - (a) about the process for including a person in a list or register;
  - (b) about the details to be included in a list or register;
  - (c) for ensuring those details remain up to date;
  - (d) about the publication of a list or register;
  - (e) for the purpose of ensuring that a person included in a list or register continues to meet the criteria for appointment as an assessor;
  - (f) for the purpose of ensuring the quality of ESOS assessments;
  - (g) about the temporary or permanent removal of a person from a list or register in specified circumstances.
- (9) The regulations may make provision authorising a scheme administrator to share reports, notices or other information relating to an energy savings opportunity scheme with a designated body for the purposes referred to in subsection (8)(e) or (f).
- (10) ESOS regulations may make provision –
  - (a) enabling the Secretary of State or a scheme administrator to give a direction relating to the maintenance of a list or register;
  - (b) requiring a person responsible for maintaining a list or register to comply with such a direction.

## 258 ESOS action plans

- (1) ESOS regulations may require participants to produce ESOS action plans.
- (2) An “ESOS action plan” is a written statement of –
  - (a) any action a participant proposes to take for the purpose of achieving energy savings or emissions reductions;
  - (b) any energy savings or emissions reductions targets a participant intends to achieve.
- (3) Where an ESOS action plan does not include any proposals for taking such action or any such targets, provision made by virtue of subsection (1) may require that a participant include an explanation in the plan.
- (4) ESOS regulations may make provision about the production of ESOS action plans, including in particular provision about –
  - (a) when a participant must produce a plan;

- (b) the period to which a plan must relate;
  - (c) the form and content of a plan;
  - (d) the matters that must be taken into account in producing a plan.
- (5) ESOS regulations may make provision about the publication of ESOS action plans.

## **259 Action to achieve energy savings or emissions reductions**

- (1) ESOS regulations may make provision –
- (a) imposing requirements (other than the requirements referred to in paragraph (b)) on participants so as to encourage them to –
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions, or
  - (b) requiring participants to –
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions.
- (2) The kinds of action that may be specified for the purposes of subsection (1) are –
- (a) taking action in accordance with a recommendation made in an ESOS assessment;
  - (b) taking action in accordance with an ESOS action plan;
  - (c) taking any other action of a specified kind;
  - (d) taking action to achieve a target included in an ESOS action plan;
  - (e) taking action to achieve any other specified outcome;
  - (f) adopting processes, practices or systems of a specified kind;
  - (g) conforming to specified standards.
- (3) The provision that may be made by virtue of subsection (1)(a) includes in particular –
- (a) provision requiring a participant to report –
    - (i) on whether the participant has taken the specified action, or on the steps taken by the participant towards doing so, or
    - (ii) on whether the participant has achieved the specified energy savings or emissions reductions, or on the progress made by the participant towards doing so;
  - (b) provision requiring a participant to provide an explanation for any of the matters mentioned in paragraph (a).
- (4) Provision made by virtue of subsection (1)(b) may include a requirement for a participant to report on action taken or energy savings or emissions reductions achieved.
- (5) Regulations made by virtue of subsection (1) may make provision –

- (a) requiring participants to produce and retain evidence;
  - (b) about the verification of matters about which the participant has reported;
  - (c) about the publication of reports.
- (6) ESOS regulations may –
- (a) specify the requirements imposed on a participant by virtue of subsection (1) by reference to a cost-benefit analysis;
  - (b) specify circumstances in which a participant is required to take action;
  - (c) impose a requirement to take a specified action on all participants in an energy savings opportunity scheme, or on all participants of a specified description.

*Administration, enforcement and appeals*

## 260 Scheme administration

- (1) ESOS regulations may appoint one or more public authorities to carry out functions with respect to –
- (a) administering an energy savings opportunity scheme;
  - (b) monitoring compliance with, and enforcing requirements imposed by, the regulations.
- (2) A person appointed by virtue of subsection (1) is referred to as a “scheme administrator”.
- (3) The regulations may make provision for a scheme administrator to authorise another person to exercise specified functions of the scheme administrator.
- (4) Regulations made by virtue of subsection (1) may in particular include provision about –
- (a) the obtaining of information by, and the provision of information to, a scheme administrator;
  - (b) the determination by a scheme administrator of information in default of its being provided;
  - (c) the auditing and verification of information;
  - (d) the keeping, production and inspection of records;
  - (e) the determination by a scheme administrator of whether an undertaking is a participant in an energy savings opportunity scheme;
  - (f) cooperation and information sharing between scheme administrators.
- (5) ESOS regulations may make provision imposing requirements on a participant relating to the provision of such facilities and services, including transport and accommodation, as may be necessary to facilitate the carrying out of any of the scheme administrator’s functions.
- (6) ESOS regulations may confer functions on a scheme administrator in relation to the publication of information relating to an energy savings opportunity scheme or its participants.

- (7) ESOS regulations may make provision—
  - (a) about the giving of guidance by a scheme administrator or the Secretary of State in connection with the operation of an energy savings opportunity scheme;
  - (b) requiring specified persons to have regard to such guidance.
- (8) ESOS regulations may make provision requiring the payment by participants to the scheme administrator of fees for or in connection with the carrying out by the scheme administrator of the scheme administrator’s functions.
- (9) ESOS regulations may confer a power on a national authority to require a scheme administrator to provide the authority with such information—
  - (a) relating to an energy savings opportunity scheme, and
  - (b) relevant to the exercise of the authority’s functions,as the authority requests.
- (10) In this section—
  - “national authority” means—
    - (a) the Secretary of State;
    - (b) the Welsh Ministers;
    - (c) the Scottish Ministers;
    - (d) the Department for the Economy in Northern Ireland;
  - “public authority” means a person with functions of a public nature.

## **261 Enforcement, penalties and offences**

- (1) ESOS regulations may authorise a scheme administrator—
  - (a) to require the production of documents or the provision of information by any person;
  - (b) to question the officers of an undertaking;
  - (c) to enter premises with a warrant;
  - (d) to inspect premises and anything on premises and when doing so—
    - (i) to take measurements, photographs, recordings or copies;
    - (ii) to seize documents or records;
    - (iii) to require any person at the premises to provide facilities and assistance to the extent that is within that person’s control;
  - (e) to issue a notice requiring a participant to take steps specified in the notice for the purpose of—
    - (i) demonstrating compliance with requirements imposed by or under ESOS regulations, or
    - (ii) remedying a failure to comply with such requirements.
- (2) ESOS regulations may make provision requiring a participant to give notice to a scheme administrator where the participant is unlikely to comply, or has failed to comply, with a requirement imposed by or under the regulations.

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- (3) ESOS regulations may provide that a person is liable to one or more penalties in respect of—
    - (a) a failure to comply with a requirement imposed on the person by or under the regulations;
    - (b) making a false or misleading statement in connection with an energy savings opportunity scheme.
  - (4) The provision that may be made by virtue of subsection (3) includes provision—
    - (a) for the publication of specified information relating to the failure to comply;
    - (b) authorising a scheme administrator to impose a financial penalty.
  - (5) Where by virtue of subsection (3) ESOS regulations provide for the imposition of a financial penalty, the regulations—
    - (a) must provide for the penalty to be paid to the scheme administrator or such other person as the regulations may specify;
    - (b) may specify the amount of the penalty or provide for the amount to be determined by the scheme administrator in accordance with the regulations;
    - (c) may provide for the payment of a further penalty (of an amount specified by or determined in accordance with the regulations) for each day on which the failure to comply is not remedied;
    - (d) may specify how the penalty may be recovered.
  - (6) ESOS regulations may create offences relating to energy savings opportunity schemes.
  - (7) Regulations made by virtue of subsection (6) may provide for an offence created by the regulations to be triable—
    - (a) only summarily, or
    - (b) either summarily or on indictment.
  - (8) Regulations made by virtue of subsection (6) may provide for an offence created by the regulations to be punishable with a fine.
  - (9) Regulations may—
    - (a) provide for defences against offences;
    - (b) make provision about matters of procedure and evidence in proceedings relating to offences;
    - (c) include provision about the liability of a director, manager, secretary or other officer of a body corporate, or a partner of a Scottish partnership, or of a person purporting to act in such a capacity, where an offence under the regulations—
      - (i) is committed with the consent or connivance of such a person, or
      - (ii) is attributable to neglect on the part of such a person.

- (10) References in this section to a scheme administrator include references to a person authorised by a scheme administrator in accordance with provision in ESOS regulations made by virtue of section 260(3).

## **262 Appeals**

- (1) ESOS regulations that provide for the imposition of a financial penalty must also provide for a right of appeal to a court or tribunal against the imposition of the penalty.
- (2) ESOS regulations may confer rights of appeal against—
- (a) decisions made in relation to an energy savings opportunity scheme, and
  - (b) penalties imposed (other than financial penalties) or enforcement action taken for failure to comply with the requirements of the regulations.
- (3) Regulations that make provision by virtue of subsection (2) must specify the court, tribunal or person who is to hear and determine an appeal made by virtue of that subsection.
- (4) The provision that may be made by virtue of subsection (1) or (2) includes, in particular, provision about—
- (a) the grounds on which an appeal may be made;
  - (b) the procedure for making an appeal (including any fee which may be payable);
  - (c) suspending the effect of any decision, penalty or enforcement action pending determination of the appeal;
  - (d) the powers of the court, tribunal or person to which an appeal is made.

### *Procedure etc for regulations*

## **263 ESOS regulations: procedure etc**

- (1) Before making ESOS regulations, the Secretary of State must consult such persons likely to be affected by the regulations as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before this section comes into force (as well as by consultation after that time).
- (3) Before making ESOS regulations that contain provision within devolved competence, the Secretary of State must give notice—
- (a) stating that the Secretary of State proposes to make ESOS regulations,
  - (b) setting out or describing the provisions of the regulations that contain provision within devolved competence, and
  - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to those provisions,
- and must consider any representations duly made and not withdrawn.

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- (4) A notice under subsection (3) must be given to each relevant devolved authority, that is to say –
    - (a) the Scottish Ministers, so far as the regulations contain provision within Scottish devolved competence;
    - (b) the Welsh Ministers, so far as the regulations contain provision within Welsh devolved competence;
    - (c) the Department for the Economy in Northern Ireland, so far as the regulations contain provision within Northern Ireland devolved competence.
  - (5) The Secretary of State need not wait until the end of the period specified under subsection (3)(c) before making ESOS regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provisions referred to in subsection (3)(b).
  - (6) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provisions referred to in subsection (3)(b) have been taken into account in the regulations.
  - (7) References in subsection (3) to provision within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.
  - (8) Where the Secretary of State makes ESOS regulations that have effect in relation to the compliance period beginning on 6 December 2019 (see regulation 4 of the Energy Savings Opportunity Schemes Regulations 2014 (S.I. 2014/1643)) –
    - (a) subsections (3) to (7) do not apply, and
    - (b) before making the regulations, the Secretary of State must consult –
      - (i) the Scottish Ministers, so far as the regulations contain provision within Scottish devolved competence,
      - (ii) the Welsh Ministers, so far as the regulations contain provision within Welsh devolved competence, and
      - (iii) the Department for the Economy in Northern Ireland, so far as the regulations contain provision within Northern Ireland devolved competence,and subsection (2) applies to consultation under paragraph (b) as it applies to consultation under subsection (1).
  - (9) ESOS regulations may create exceptions to any requirement imposed by the regulations.
  - (10) ESOS regulations may –
    - (a) make provision about application to the Crown;
    - (b) to the extent that they bind the Crown, restrict or modify the application of the regulations.



- (11) ESOS regulations containing any of the following (with or without other provision) are subject to the affirmative procedure—
  - (a) provision extending the descriptions of undertaking to which the regulations apply;
  - (b) provision made by virtue of section 259(1)(b) of a kind not previously provided for in ESOS regulations;
  - (c) provision conferring on a scheme administrator enforcement powers of a kind not previously provided for in ESOS regulations;
  - (d) provision creating penalties;
  - (e) provision increasing the amount of financial penalties by more than is necessary to reflect changes in the value of money;
  - (f) provision creating an offence or increasing the fine for an existing offence;
  - (g) provision for the payment of a new fee.
- (12) Any other ESOS regulations are subject to the negative procedure.

*Directions and financial assistance*

**264 Directions to scheme administrators**

- (1) The Secretary of State may give directions to a scheme administrator.
- (2) The power to give directions under this section includes a power to vary or revoke the directions.
- (3) A scheme administrator must comply with any direction given to it under this section.

**265 Financial assistance to scheme administrators and participants**

- (1) The Secretary of State may give, or arrange for the giving of, financial assistance to—
  - (a) scheme administrators;
  - (b) participants.
- (2) “Financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.
- (3) Financial assistance under this section may be given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State.

*Interpretation*

**266 Interpretation of Part 11**

- (1) In this Part—

“assessor” has the meaning given by section 256(3);

“cost benefit analysis” has the meaning given by section 256(6);  
“emissions reduction” has the meaning given by section 254(5);  
“energy consumption” has the meaning given by ESOS regulations;  
“energy saving” has the meaning given by section 254(4);  
“energy savings opportunity scheme” has the meaning given by section 254(2);  
“ESOS action plan” has the meaning given by section 258(2);  
“ESOS assessment” has the meaning given by section 256(1);  
“ESOS regulations” means regulations made under section 254(1);  
“greenhouse gas” has the meaning given by section 92 of the Climate Change Act 2008;  
“participant” means an undertaking to which an energy savings opportunity scheme applies;  
“related undertaking”, in relation to a participant, means a fellow subsidiary undertaking of, or a group undertaking in relation to, that participant;  
“scheme administrator” has the meaning given by section 260(2);  
“specified” means specified in ESOS regulations;  
“undertaking”, “group undertaking” and “fellow subsidiary undertaking” have the meanings given by section 1161 of the Companies Act 2006.

- (2) For the purposes of this Part, provision—
- (a) is within Welsh devolved competence if it 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);
  - (b) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (c) is within Northern Ireland devolved competence if it—
    - (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.

## PART 12

### CORE FUEL SECTOR RESILIENCE

#### CHAPTER 1

##### INTRODUCTION

#### 267 General objective

The functions of the Secretary of State under this Part must be exercised with a view to—

- (a) ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities, and
- (b) reducing the risk of emergencies affecting fuel supplies.

#### 268 “Core fuel sector activity” and other key concepts

- (1) In this Part “core fuel sector activity” means an activity of a kind mentioned in subsection (2), so far as the activity—
  - (a) is carried on in the United Kingdom in the course of a business, and
  - (b) contributes (directly or indirectly) to the supply of core fuels to consumers in the United Kingdom or persons carrying on business in the United Kingdom.
- (2) The kinds of activity are—
  - (a) storing oil or renewable transport fuel;
  - (b) handling oil or renewable transport fuel;
  - (c) the carriage of oil or renewable transport fuel by sea or inland water;
  - (d) transporting oil or renewable transport fuel by road or rail;
  - (e) conveying oil or renewable transport fuel by pipes;
  - (f) processing or producing oil or renewable transport fuel (whether by refining, blending or otherwise).
- (3) In subsection (2) the references to “oil” do not include crude oil which has not yet entered any refinery or terminal in the United Kingdom.
- (4) In this Part “core fuels” means—
  - (a) crude oil based fuels, and
  - (b) renewable transport fuels.
- (5) In this Part “core fuel sector resilience” means the capability of core fuel sector participants to—
  - (a) manage the risk of,
  - (b) reduce the potential adverse impact of, and
  - (c) facilitate recovery from,disruptions to core fuel sector activities.
- (6) In this Part “core fuel sector participant” means—

- (a) a person carrying on core fuel sector activities;
  - (b) a Part 12 facility owner.
- (7) For the purposes of this Part there is “continuity of supply of core fuels” where the supply of core fuels to consumers in all areas of the United Kingdom, and persons carrying on business in all areas of the United Kingdom—
  - (a) is reliable and continuous, and
  - (b) is maintained at normal levels.
- (8) In subsection (7) “normal levels” means levels that—
  - (a) are not substantially below average monthly levels of supply in the United Kingdom (taking account of regional variations), and
  - (b) are consistent with a reasonable balance between supply and demand.
- (9) For the purposes of subsection (8) “average monthly levels” are to be calculated by reference to levels of supply in the five years preceding the calculation.
- (10) In this Part “relevant activities or assets” —
  - (a) in relation to a person carrying on core fuel sector activities, means the person’s core fuel sector activities (and includes any land or assets under the person’s control that are associated with those activities);
  - (b) in relation to a Part 12 facility owner, means the owned facility.
- (11) In this Part—
  - (a) “Part 12 facility owner” means the owner of a pipeline, terminal, or other facility or infrastructure which is used, or any part of which is used, for the purposes of core fuel sector activities;
  - (b) in relation to a Part 12 facility owner, “the owned facility” means the facility or infrastructure mentioned in paragraph (a).
- (12) In subsection (11) “owner”, in relation to any facility or infrastructure, means—
  - (a) a person in whom the facility or infrastructure is vested, or
  - (b) a lessee of the facility or infrastructure.
- (13) In this Part references to a “person carrying on core fuel sector activities” include any person carrying on such activities (whether or not as the owner of the oil or renewable transport fuel).

## CHAPTER 2

### POWERS FOR RESILIENCE PURPOSES

#### *Directions*

#### **269 Directions to particular core fuel sector participants**

- (1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, direct a person to whom this section applies to do anything in relation to the person’s relevant activities or assets (for example,

- to acquire and install specific equipment, or carry out specific works, at the person's own expense).
- (2) The Secretary of State may not give a direction under subsection (1) unless the Secretary of State considers that the persons to whom this section applies have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.
  - (3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
    - (a) restoring continuity of supply of core fuels, or
    - (b) counteracting the disruption or failure, or its potential adverse impact.
  - (4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person's relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
    - (a) reducing the risk, or
    - (b) reducing the potential adverse impact of the disruption or failure.
  - (5) The Secretary of State may not make a direction under subsection (1), (3) or (4) unless the Secretary of State considers—
    - (a) that, the corresponding cases (if any) are not sufficiently numerous to justify making regulations under section 272, or
    - (b) that, by reason of urgency, it is not practicable to achieve the aims of the direction by regulations under section 272.
  - (6) In subsection (5)(a) the reference to “corresponding cases” is to persons to whom this section applies in relation to whom the Secretary of State considers it would be appropriate to take action corresponding to the direction.
  - (7) This section applies to the following persons—
    - (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
    - (b) a Part 12 facility owner if the owned facility has capacity in excess of 20,000 tonnes.
  - (8) For the purposes of this Part—
    - (a) a business “has capacity in excess of” a specified number of tonnes if in the most recently ended calendar year core fuel sector activities were carried on in that business in relation to more than that number of tonnes of core fuel;
    - (b) a facility or infrastructure “has capacity in excess of” a specified number of tonnes if in the most recently ended calendar year it was used for the purposes of core fuel sector activities in relation to more than that number of tonnes of core fuels.

## **270 Procedure for giving directions**

- (1) Before giving a person a direction under section 269 the Secretary of State must give the person a written notice accompanied by a draft of the proposed direction.
- (2) The notice under subsection (1) must—
  - (a) state that the Secretary of State proposes to give the person a direction in the form of the accompanying draft;
  - (b) explain why the Secretary of State proposes to give the direction;
  - (c) state when it is intended that the direction will come into effect;
  - (d) specify a period within which the person may make written representations with respect to the proposal.
- (3) The period specified under subsection (2)(d) must begin with the date on which the notice is given to the person and must be not less than 14 days.
- (4) Before giving a direction under section 269, the Secretary of State must consult—
  - (a) so far as the direction relates to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive;
  - (b) so far as the direction relates to relevant activities or assets in England, the Environment Agency;
  - (c) so far as the direction relates to relevant activities or assets in Scotland, the Scottish Environment Protection Agency;
  - (d) so far as the direction relates to relevant activities or assets in Wales, the Natural Resources Body for Wales;
  - (e) so far as the direction relates to relevant activities or assets in Northern Ireland—
    - (i) the Health and Safety Executive for Northern Ireland, and
    - (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
  - (f) any other persons the Secretary of State thinks appropriate.
- (5) The Secretary of State must decide whether to give the person the proposed direction (with or without modifications), after considering any representations made by—
  - (a) the person mentioned in subsection (1), and
  - (b) any person consulted in accordance with subsection (4).
- (6) The Secretary of State must give written notice of that decision to the person mentioned in subsection (1).
- (7) If the decision is to give the proposed direction, the notice must—
  - (a) contain the direction, and
  - (b) state the time when the direction is to take effect.
- (8) Consultation under subsection (4) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales

must be with reference to that body's functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483).

- (9) Consultation under subsection (4) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department's functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325).

## **271 Offence of failure to comply with a direction**

Any person who, without reasonable excuse, fails to comply with a direction given to the person under section 269 commits an offence and is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

*Corresponding powers to make regulations*

## **272 Corresponding powers to make regulations**

- (1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets.
- (2) The Secretary of State may not make any provision by regulations under subsection (1) unless the Secretary of State considers that the persons mentioned in paragraphs (a) and (b) of subsection (5) have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience.
- (3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
  - (a) restoring continuity of supply of core fuels, or
  - (b) counteracting the disruption or failure, or its potential adverse impact.
- (4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State

- may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of—
- (a) reducing the risk, or
  - (b) reducing the potential adverse impact of the disruption or failure.
- (5) A class or description specified for the purposes of subsection (1), (3) or (4) may not include persons other than—
- (a) persons carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes, or
  - (b) Part 12 facility owners whose owned facility has capacity in excess of 1,000 tonnes.
- (6) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.
- (7) Before making regulations under this section the Secretary of State must consult—
- (a) so far as the regulations relate to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive;
  - (b) so far as the regulations relate to relevant activities or assets in England, the Environment Agency;
  - (c) so far as the regulations relate to relevant assets or activities in Scotland, the Scottish Environment Protection Agency;
  - (d) so far as the regulations relate to relevant activities or assets in Wales, the Natural Resources Body for Wales;
  - (e) so far as the regulations relate to relevant activities or assets in Northern Ireland—
    - (i) the Health and Safety Executive for Northern Ireland, and
    - (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
  - (f) any other persons the Secretary of State thinks appropriate.
- (8) Regulations under this section are subject to the affirmative procedure.
- (9) Consultation under subsection (7) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales must be with reference to that body's functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483).
- (10) Consultation under subsection (7) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department's functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325).



### *Information*

#### **273 Power to require information**

- (1) The Secretary of State may by notice in writing require any of the following to provide the Secretary of State with information relating to their relevant activities or assets –
  - (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
  - (b) a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes.
- (2) The Secretary of State may by notice in writing require a relevant wetstock manager to provide the Secretary of State with information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.
- (3) In this Part “relevant wetstock manager” means a person who provides to persons who make retail supplies of core fuels in the United Kingdom stock management services in respect of such supplies.
- (4) The Secretary of State may only require information under this section for the purpose of maintaining or improving core fuel sector resilience.
- (5) A notice under subsection (1) or (2) may –
  - (a) specify the manner in which information is to be provided;
  - (b) specify time limits for providing information;
  - (c) require information to be provided at specified intervals.
- (6) Before giving a person a notice under subsection (1) or (2) the Secretary of State must –
  - (a) notify the person in writing of the proposed contents of the notice and of the period within which the person may make written representations with respect to the proposed requirement, and
  - (b) consider any representations made by the person.
- (7) The period notified under subsection (6)(a) must begin on the date on which the notification is given and (subject to subsection (8)) must be not less than 14 days.
- (8) The Secretary of State may notify a period under subsection (6)(a) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is necessary to do so by reason of urgency.

#### **274 Duty to report incidents**

- (1) If at any time a person –
  - (a) knows, or has reason to suspect, that a notifiable incident is occurring or has occurred, and
  - (b) meets the condition in paragraph (a), (b) or (c) of subsection (2),

- that person must notify the Secretary of State of the incident as soon as possible.
- (2) The conditions mentioned in subsection (1)(b) are that—
    - (a) the person is carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
    - (b) the person is a Part 12 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes;
    - (c) the person is of a class or description specified in regulations made by the Secretary of State under this subsection.
  - (3) In this section “notifiable incident”, in relation to a person, means an incident which affects the person’s relevant activities or assets in such a way as to create a significant risk of, or cause—
    - (a) disruption to, or
    - (b) a failure of,the continuity of supply of core fuels.
  - (4) The Secretary of State may by notice in writing require a person who has given a notice under subsection (1) to provide further information about the incident.
  - (5) Before giving a person a notice under subsection (4) the Secretary of State must—
    - (a) notify the person in writing of—
      - (i) the proposed contents of the notice, and
      - (ii) the period within which the person may make written representations with respect to the proposal, and
    - (b) consider any representations made by the person.
  - (6) The period notified under subsection (5)(a)(ii) must begin on the date on which the notification is given and (subject to subsection (7)) must be not less than 14 days.
  - (7) The Secretary of State may notify a period under subsection (5)(a)(ii) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is necessary to do so by reason of urgency.
  - (8) A notice under subsection (4) may specify—
    - (a) the manner in which information is to be provided, and
    - (b) time limits for providing information.
  - (9) Where a notification under subsection (1) is not made in writing, it must be confirmed in writing as soon as possible.
  - (10) Regulations under subsection (2)(c) may specify the meaning that “relevant activities or assets” is to have in subsection (3) in relation to persons of a class or description of persons specified in the regulations.
  - (11) Regulations under subsection (2)(c) are subject to the affirmative procedure.

### **275 Contravention of requirement under section 273 or 274**

- (1) A person who, without reasonable excuse, fails to comply with a requirement imposed by a notice under section 273(1) or (2) or 274(4) commits an offence.
- (2) A person who, without reasonable excuse, fails to comply with section 274(1) commits an offence.
- (3) A person who commits an offence under this section is liable—
  - (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

### **276 Provision of information at specified intervals**

- (1) The Secretary of State may by regulations require any of the following to provide to the Secretary of State, at intervals specified in the regulations, information relating to their relevant activities or assets—
  - (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
  - (b) a Part 12 facility owner whose owned facility has capacity in excess of 1,000 tonnes.
- (2) The Secretary of State may by regulations require a relevant wetstock manager to provide to the Secretary of State, at intervals specified in the regulations, information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.
- (3) The power to make regulations under this section may only be exercised for the purpose of maintaining or improving core fuel sector resilience.
- (4) The regulations may make provision about—
  - (a) the information to be provided;
  - (b) the manner in which information is to be provided;
  - (c) time limits for providing information.
- (5) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.
- (6) Regulations under this section are subject to the affirmative procedure.

**277 Disclosure of information held by the Secretary of State**

- (1) Subsection (2) applies to information held by the Secretary of State which was provided to the Secretary of State under section 273, 274 or 276.
- (2) The information may be disclosed –
  - (a) to any government department or devolved authority for the purpose of –
    - (i) maintaining or improving core fuel sector resilience, or
    - (ii) restoring, or counteracting a disruption to, or failure of, continuity of supply of core fuels (or counteracting the potential adverse impact of any such disruption or failure), or
  - (b) if the disclosure is necessary for the purpose of criminal proceedings.
- (3) Nothing in this section authorises the making of a disclosure which –
  - (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
  - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.

In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account.
- (4) In subsection (2) “devolved authority” means –
  - (a) the Welsh Ministers,
  - (b) the Scottish Ministers, or
  - (c) a Northern Ireland department.

**278 Disclosure of information by HMRC**

- (1) His Majesty’s Revenue and Customs (or anyone acting on their behalf) may disclose information to the Secretary of State for the purpose of facilitating the exercise by the Secretary of State of functions relating to core fuel sector resilience.
- (2) A person who receives information as a result of this section may not –
  - (a) use the information for a purpose other than that mentioned in subsection (1), or
  - (b) further disclose the information,

except with the consent of the Commissioners for His Majesty’s Revenue and Customs (which may be general or specific).
- (3) If a person discloses information in contravention of subsection (2)(b) which relates to a person whose identity –
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,

section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in

relation to a disclosure of information in contravention of section 20(9) of that Act.

- (4) This section does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (5) Nothing in this section authorises the making of a disclosure which—
  - (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
  - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.

In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account.

#### *Appeal against notice or direction*

### **279 Appeal against notice or direction**

- (1) A person to whom a direction under section 269 or a notice under section 273 or 274(4) is given may appeal to the First-tier Tribunal against the direction or notice on the ground that the decision to give it—
  - (a) is based on an error of fact,
  - (b) is wrong in law, or
  - (c) is unfair or unreasonable.
- (2) On an appeal under this section the Tribunal may—
  - (a) confirm or cancel the direction or notice, or
  - (b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

## **CHAPTER 3**

### **ENFORCEMENT**

#### *Offences*

### **280 False statements etc**

- (1) It is an offence for a person to make a statement which the person knows is false or materially misleading—
  - (a) in responding to a requirement imposed by the Secretary of State—
    - (i) under section 273 (power to require information),
    - (ii) under section 274(4) (duty to report incidents), or
    - (iii) under regulations under section 276 (provision of information at specified intervals), or
  - (b) in making any other statement to the Secretary of State in connection with any of the Secretary of State's functions under this Part.

- (2) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates' court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

### **281 Offences under regulations**

- (1) This section applies to regulations under—
- (a) section 272 (corresponding powers to make regulations);
  - (b) section 276 (provision of information at specified intervals).
- (2) Regulations to which this section applies may provide for an offence under the regulations to be triable—
- (a) only summarily, or
  - (b) either summarily or on indictment.
- (3) Regulations to which this section applies may provide for an offence under the regulations that is triable either way to be punishable—
- (a) on summary conviction in England and Wales with imprisonment for a term not exceeding the period specified or a fine (or both);
  - (b) on summary conviction in Scotland or Northern Ireland with imprisonment for a term not exceeding the period specified or a fine not exceeding the statutory maximum (or both);
  - (c) on conviction on indictment, with imprisonment for a term not exceeding the period specified, which may not exceed two years, or a fine (or both).
- (4) A period specified under subsection (3)(a) may not exceed the general limit in a magistrates' court.
- (5) A period specified under subsection (3)(b) may not exceed—
- (a) in relation to Scotland, 12 months;
  - (b) in relation to Northern Ireland, 6 months.
- (6) Regulations to which this section applies may provide for a summary offence under the regulations to be punishable—
- (a) with imprisonment for a term not exceeding the period specified,
  - (b) with—

- (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
    - (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or
  - (c) with both.
- (7) A period specified under subsection (6)(a) may not exceed –
- (a) in relation to England and Wales –
    - (i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 comes into force, or
    - (ii) 51 weeks, in relation to offences committed on or after that date,
  - (b) in relation to Scotland, 12 months,
  - (c) in relation to Northern Ireland, 6 months.
- (8) In this section “specified” means specified in the regulations.

## **282 Proceedings for offences**

Proceedings for an offence under this Part (including an offence created by regulations under section 272 or 276) –

- (a) may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) may not be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

## **283 Liability of officers of entities**

- (1) Where an offence under this Part committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
  - (b) to be attributable to neglect on the part of an officer of the body corporate,
- that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means –
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person purporting to act in any such capacity.
- (3) In subsection (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

- (4) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly.

*Enforcement undertakings*

**284 Enforcement undertakings**

- (1) Subsection (2) applies if –
- (a) the Secretary of State has reasonable grounds to suspect that a person has committed an offence falling within subsection (5),
  - (b) the person offers to the Secretary of State an enforcement undertaking in respect of the relevant act or omission, and
  - (c) the Secretary of State accepts that undertaking.
- (2) Unless the person has failed to comply with the undertaking (or any part of it) the person may not at any time be convicted of that offence in respect of the relevant act or omission.
- (3) In this Part “enforcement undertaking” means an undertaking to take, within any period specified in the undertaking, action –
- (a) for any of the purposes in subsection (4), or
  - (b) of a description specified in regulations made by the Secretary of State.
- (4) The purposes mentioned in subsection (3) are –
- (a) to secure that the offence does not continue or recur,
  - (b) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
  - (c) to benefit any person affected by the offence.
- (5) The following offences fall within this subsection –
- (a) an offence under –
    - (i) section 271 (failure to comply with a direction),
    - (ii) section 275 (contravention of requirement under section 273 or 274), or
    - (iii) section 280 (false statements etc);
  - (b) an offence, other than an offence triable only summarily, that is created by regulations under –
    - (i) section 272 (corresponding powers to make regulations), or
    - (ii) section 276 (provision of information at regular intervals).
- (6) The reference in subsection (4)(c) to action to “benefit any person affected by the offence” includes action by way of the payment of a sum of money.
- (7) Where a person from whom the Secretary of State has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied



with part of it, the partial compliance must be taken into account in any decision whether to institute any criminal proceedings in respect of the offence in question.

- (8) In this section “relevant act or omission” means an act or omission of the person to which the grounds mentioned in subsection (1)(a) relate.
- (9) Regulations under subsection (3)(b) are subject to the affirmative procedure.
- (10) Schedule 20 contains further provision about enforcement undertakings, including provision about—
  - (a) procedure;
  - (b) compliance certificates;
  - (c) appeals.

#### *Guidance*

### **285 Guidance: criminal and civil sanctions**

- (1) The Secretary of State must issue guidance as to—
  - (a) the sanctions (including criminal sanctions) to which a person who commits an offence under this Part may be liable,
  - (b) the action which the Secretary of State may take to enforce offences under this Part, whether by virtue of section 284 and Schedule 20 or otherwise, and
  - (c) the circumstances in which the Secretary of State is likely to take any such action.
- (2) The Secretary of State—
  - (a) must issue guidance about how the Secretary of State intends to exercise the Secretary of State’s functions under section 284 and Schedule 20;
  - (b) must have regard to the guidance in exercising the Secretary of State’s functions under those provisions.
- (3) Before issuing guidance under this section, the Secretary of State must—
  - (a) prepare a draft of the proposed guidance;
  - (b) consult such persons as the Secretary of State considers appropriate;
  - (c) comply with the requirements of section 286.
- (4) The Secretary of State may from time to time revise guidance issued under this section and issue revised guidance.
- (5) Subsection (3) applies to revised guidance as it applies to the original guidance.
- (6) The Secretary of State must arrange for the publication of guidance (or revised guidance) issued under this section.

**286 Guidance: Parliamentary scrutiny**

- (1) Before issuing guidance under section 285, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.
- (2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with—
  - (a) the day on which the draft is laid before both Houses of Parliament, or
  - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days.
- (3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.
- (4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than four days.

**CHAPTER 4****GENERAL***Financial assistance***287 Financial assistance for resilience and continuity purposes**

- (1) The Secretary of State may, with the consent of the Treasury, provide financial assistance to a core fuel sector participant for the purpose of—
  - (a) maintaining or improving core fuel sector resilience, or
  - (b) securing or maintaining continuity of supply of core fuels.
- (2) Financial assistance under this section may be given in any form.
- (3) Financial assistance under this section may, in particular, be given by way of—
  - (a) grants,
  - (b) loans,
  - (c) guarantee or indemnity,
  - (d) the acquisition of shares or any other interest in, or securities of, a body corporate,
  - (e) the acquisition of any undertaking or assets, or
  - (f) incurring expenditure for the benefit of the person assisted.
- (4) Financial assistance under this section may be given on such terms and conditions as the Secretary of State considers appropriate (including provision for repayment, with or without interest).

- (5) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (3)(d) without the consent of the body corporate concerned.

*Power to amend thresholds*

**288 Power to amend thresholds**

- (1) The Secretary of State may by regulations amend or modify any provision mentioned in subsection (2) for the purpose of varying any amount for the time being specified in that provision.
- (2) The provisions are –
- (a) section 269(7) (directions to core fuel sector participants);
  - (b) section 272(5) (corresponding powers to make regulations);
  - (c) section 273(1) (power to require information);
  - (d) section 274(2)(a) and (b) (duty to report incidents);
  - (e) section 276(1) (provision of information at specified intervals).
- (3) Regulations under this section are subject to the affirmative procedure.

*Interpretation of Part 12*

**289 Interpretation of Part 12**

- (1) In this Part –
- “company” means a company within the meaning of section 1 of the Companies Act 2006;
  - “continuity of supply of core fuels” is to be interpreted in accordance with section 268(7);
  - “core fuel sector activity” has the meaning given by section 268;
  - “core fuel sector participant” has the meaning given by section 268(6);
  - “core fuel sector resilience” has the meaning given by section 268(5);
  - “core fuels” has the meaning given by section 268(4);
  - “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes –
    - (a) crude oils from which distillate fractions have been removed, and
    - (b) crude oils to which distillate fractions have been added;
  - “crude oil based fuel” means any fuel comprised wholly or mainly of crude oil or substances derived from crude oil;
  - “enactment” includes –
    - (a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);

- (b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- (e) any retained direct EU legislation;

“enforcement undertaking” has the meaning given by section 284;

“oil” means –

- (a) crude oil;
- (b) crude oil based fuels;
- (c) components;

“the owned facility”, in relation to a Part 12 facility owner, has the meaning given by section 268(11);

“Part 12 facility owner” has the meaning given by section 268(11);

“person carrying on core fuel sector activities” is to be interpreted in accordance with section 268(13);

“relevant activities or assets” is to be interpreted in accordance with section 268(10);

“relevant wetstock manager” has the meaning given by section 273(3);

“renewable transport fuel” has the meaning given by section 132 of the Energy Act 2004;

“terminal” means any site for the storage in bulk of oil or renewable transport fuel.

- (2) In this Part references to the “capacity” of a business or of a facility or infrastructure are to be interpreted in accordance with section 269(8).
- (3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons.
- (4) For the purposes of the definition of “oil” in subsection (1) “component” means any substance (whether or not derived from crude oil) of a kind which is mixed with other substances to produce a crude oil based fuel.

## PART 13

### OFFSHORE WIND ELECTRICITY GENERATION, OIL AND GAS

#### CHAPTER 1

##### OFFSHORE WIND ELECTRICITY GENERATION

### 290 Meaning of “relevant offshore wind activity”

- (1) In this Chapter, “relevant offshore wind activity” means –
  - (a) the planning, construction, operation or decommissioning of offshore wind electricity infrastructure, or

- (b) the identification of an area for activity within paragraph (a) (whether or not any particular offshore wind electricity infrastructure is in contemplation).
- (2) In subsection (1), “offshore wind electricity infrastructure” means—
- (a) a generating station, in the UK marine area, that generates electricity from wind (an “offshore wind generating station”), or
  - (b) infrastructure, in the UK marine area, used or intended for use in connection with—
    - (i) an offshore wind generating station, or
    - (ii) the conveyance of electricity generated by an offshore wind generating station.
- (3) For the purposes of the reference in subsection (2)(b)(ii) to infrastructure used or intended for use in connection with the conveyance of electricity generated by an offshore wind generating station, it does not matter whether the infrastructure is also used or intended for use in connection with the conveyance of electricity generated from other sources.

## **291 Strategic compensation for adverse environmental effects**

- (1) This section applies where a public authority is subject to one or more environmental compensation obligations in relation to relevant offshore wind activities.
- (2) “Environmental compensation obligation” means—
- (a) a statutory duty (however expressed) to secure that measures are taken to compensate for adverse environmental effects of an activity, or
  - (b) a statutory condition (however expressed) requiring a public authority, before granting consent for the doing of an act by a person (“P”) in connection with an activity, to be satisfied that P will take or secure the taking of measures to compensate for adverse environmental effects of the act.
- (3) The public authority may determine that—
- (a) measures taken or secured by the authority in the exercise of any of its functions, or
  - (b) measures to be taken or secured by the authority in the exercise of any of its functions,
- are to count towards discharging the environmental compensation obligation or obligations to which the authority is subject.
- (4) In this Chapter, “adverse environmental effect” means—
- (a) anything that adversely affects the integrity of any site comprised in the national site network, or
  - (b) anything that hinders the achievement of the conservation objectives stated for a protected marine area.

- (5) The measures referred to in subsection (3) may be measures taken at the site or sites of the activities to which the measures relate or elsewhere.
- (6) In this section—  
“act” includes omission;  
“the national site network” has the same meaning as in the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);  
“protected marine area” means an area designated under—  
    (a) section 116 of the Marine and Coastal Access Act 2009 or section 13 of the Marine Act (Northern Ireland) 2013 (c. 10 (N.I.)) (marine conservation zones), or  
    (b) section 67(1)(a) of the Marine (Scotland) Act 2010 (asp 5) (marine protected areas);  
“statutory”, in relation to a duty or condition, means imposed by or under primary legislation.
- (7) For the purposes of subsection (3), a public authority (“authority A”) may, with the consent of another public authority (“authority B”), treat measures taken or secured (or to be taken or secured) by authority B as taken or secured (or to be taken or secured) by authority A in the exercise of any of its functions.
- (8) In subsection (4)(b), the reference to the conservation objectives stated for a protected marine area is a reference to the conservation objectives stated for the area pursuant to (as the case may be) section 117(2)(b) of the Marine and Coastal Access Act 2009, section 14(2)(b) of the Marine Act (Northern Ireland) 2013 or section 68(3)(b) of the Marine (Scotland) Act 2010.

## **292 Marine recovery fund**

- (1) The Secretary of State may by regulations make provision for the establishment, operation and management of one or more marine recovery funds.
- (2) A marine recovery fund is a fund—  
    (a) into which payments may be made in respect of relevant offshore wind activities, and  
    (b) out of which payments may be made towards expenditure on measures to compensate for adverse environmental effects of relevant offshore wind activities.
- (3) The following provisions of this section are without prejudice to the generality of subsection (1).
- (4) Regulations under this section may make provision—  
    (a) enabling a determination to be made, by or on behalf of the relevant person, as to whether (and, if so, the extent to which) a payment into the fund discharges a compensation condition imposed on another person in connection with the granting of consent in respect of a relevant offshore wind activity;

- (b) for a payment into the fund to be treated as discharging a compensation condition to the extent (if any) determined by virtue of paragraph (a).
- (5) “Compensation condition”, in relation to a person, means a condition requiring the person to take measures to compensate for adverse environmental effects of a relevant offshore wind activity.
- (6) “Relevant person”, for the purposes of a determination made by virtue of subsection (4)(a), means the person who imposed the compensation condition.
- (7) Regulations under this section may make provision—
  - (a) enabling payments to be made out of the fund towards expenditure described in subsection (2)(b);
  - (b) about the persons to whom such a payment may be made;
  - (c) enabling conditions to be imposed on a person to whom such a payment is made in connection with the taking of measures described in subsection (2)(b).
- (8) Regulations under this section may make provision—
  - (a) about the recovery of costs incurred in connection with the exercise of functions conferred by the regulations;
  - (b) conferring functions, including functions involving the exercise of a discretion, on the Secretary of State;
  - (c) for the delegation of functions conferred on the Secretary of State, where the functions relate to the operation or management of a marine recovery fund.
- (9) Regulations made by virtue of subsection (8)(c) may provide that a function may be delegated—
  - (a) to a Scottish public authority only if the function relates to the taking or securing of measures in Scotland;
  - (b) to a Welsh public authority only if the function relates to the taking or securing of measures in Wales;
  - (c) to a Northern Ireland public authority only if the function relates to the taking or securing of measures in Northern Ireland.
- (10) Regulations made by virtue of subsection (8)(c) must provide that the delegation of a function—
  - (a) to a Scottish public authority requires the consent of the Scottish Ministers;
  - (b) to a Welsh public authority requires the consent of the Welsh Ministers;
  - (c) to a Northern Ireland public authority requires the consent of DAERA.
- (11) Regulations made by virtue of subsection (8)(c) must provide that the delegation of a function—
  - (a) may be cancelled by the Secretary of State in accordance with the regulations;

- (b) does not prevent the Secretary of State from carrying out any function delegated.
- (12) Before making regulations under this section, the Secretary of State must consult—
- (a) the Scottish Ministers, so far as the regulations relate to relevant offshore wind activities in Scotland,
  - (b) the Welsh Ministers, so far as the regulations relate to relevant offshore wind activities in Wales,
  - (c) DAERA, so far as the regulations relate to relevant offshore wind activities in Northern Ireland, and
  - (d) such other persons as the Secretary of State considers appropriate.
- (13) Regulations under this section are subject to the negative procedure.

### **293 Assessment of environmental effects etc**

- (1) The appropriate authority may by regulations make—
- (a) provision for and in connection with the assessment of the environmental effects of relevant offshore wind activities in relation to protected sites;
  - (b) provision about the taking or securing of measures by a public authority in compensation for any adverse environmental effects of relevant offshore wind activities in relation to protected sites (“compensatory measures”).
- (2) The appropriate authority is the Secretary of State, subject to paragraphs (a) to (c)—
- (a) the Scottish Ministers are the appropriate authority in relation to relevant offshore wind activities in the Scottish inshore region;
  - (b) the Welsh Ministers are the appropriate authority in relation to relevant offshore wind activities in the Welsh inshore region, subject to subsection (3) and other than in relation to qualifying Secretary of State functions;
  - (c) DAERA is the appropriate authority in relation to relevant offshore wind activities in the Northern Ireland inshore region, other than in relation to qualifying Secretary of State functions.
- (3) In subsection (2)(b), “relevant offshore wind activity” does not include an activity within section 290(1)(a) relating to a generating station that has a capacity such that the construction or extension of the generating station would be a nationally significant infrastructure project (within the meaning given by sections 14 and 15 of the Planning Act 2008).
- (4) The provision that may be made by virtue of subsection (1) includes provision—
- (a) specifying the matters to be dealt with by an assessment;



- (b) about the procedure to be followed in carrying out an assessment, including when an assessment must be carried out and matters that must be taken into account;
  - (c) specifying the person by whom an assessment, or a specified kind of assessment, must be carried out;
  - (d) requiring an assessment to be carried out by a specified person in specified circumstances;
  - (e) authorising or requiring the supply of information (including information the supply of which would not otherwise be permitted) for the purposes of an assessment;
  - (f) enabling a person carrying out an assessment (an “assessor”) to require a person who has applied for consent to provide the assessor with assistance for the purposes of or in connection with the assessment;
  - (g) prohibiting the granting of consent in respect of an activity where an assessment has not been carried out in accordance with the regulations;
  - (h) about when or how compensatory measures must or may be provided;
  - (i) disapplying or otherwise modifying, whether generally or in specified circumstances or subject to specified conditions, any of the provisions listed in subsection (5)(a), (b), (c) or (d) (as the case may be).
- (5) The provisions referred to in subsection (4)(i) are –
- (a) in the case of regulations made by the Secretary of State –
    - (i) section 126 of the Marine and Coastal Access Act 2009;
    - (ii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);
    - (iii) regulations 6, 27, 28 and 30 to 37 of the Conservation of Offshore Marine Habitats and Species Regulations 2017 (S.I. 2017/1013);
    - (iv) any other provision that relates to the taking or securing of compensatory measures, where the provision is made by or under an Act;
  - (b) in the case of regulations made by the Scottish Ministers –
    - (i) section 83 of the Marine (Scotland) Act 2010 (asp 5);
    - (ii) regulations 3 and 3A and Part 4 of the Conservation (Natural Habitats, &c.) Regulations 1994 (S.I. 1994/2716);
    - (iii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);
    - (iv) any other provision that relates to the taking or securing of compensatory measures in or in relation to the Scottish inshore region, where the provision is made by or under an Act of the Scottish Parliament;
  - (c) in the case of regulations made by the Welsh Ministers –
    - (i) section 126 of the Marine and Coastal Access Act 2009;
    - (ii) regulations 9 and 10 and Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012);

- (iii) any other provision that relates to the taking or securing of compensatory measures, where the provision is made by or under an Act or Measure of Senedd Cymru;
  - (d) in the case of regulations made by DAERA –
    - (i) section 23 of the Marine Act (Northern Ireland) 2013;
    - (ii) regulations 3 and 3A and Part 4 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (S.R. (N.I.) 1995 No. 380);
    - (iii) any other provision that relates to the taking or securing of compensatory measures in or in relation to the Northern Ireland inshore region, where the provision is made by or under Northern Ireland legislation.
- (6) But regulations under this section may not disapply or otherwise modify, or make provision which could undermine or circumvent –
  - (a) section 126(7)(a) or (b) of the Marine and Coastal Access Act 2009, section 83(4)(b)(i) or (ii) of the Marine (Scotland) Act 2010 or section 23(7)(a) or (b) of the Marine Act (Northern Ireland) 2013,
  - (b) regulation 64 of the Conservation of Habitats and Species Regulations 2017,
  - (c) regulation 29 of the Conservation of Offshore Marine Habitats and Species Regulations 2017,
  - (d) regulation 49 of the Conservation (Natural Habitats, &c.) Regulations 1994,
  - (e) regulation 44 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995, or
  - (f) any provision about qualifying Secretary of State functions (unless the regulations are made by the Secretary of State).
- (7) Regulations made under this section by the Secretary of State –
  - (a) may not provide for a function that is exercisable by a Scottish public authority, a Welsh public authority or a Northern Ireland public authority to cease to be exercisable by that authority, and
  - (b) to the extent that a function is exercisable by or on behalf of a Scottish public authority, a Welsh public authority or a Northern Ireland public authority, may not provide for the function also to be exercisable to that extent by another person,but may (subject to paragraphs (a) and (b)) modify such a function.
- (8) Regulations under this section may make provision –
  - (a) enabling the appropriate authority or a specified person to direct a person to take steps or to refrain from taking steps;
  - (b) requiring a person given such a direction to comply with it.
- (9) But regulations made by the Secretary of State by virtue of subsection (8)(a) may not enable directions to be given –
  - (a) to a Scottish public authority by a person other than the Scottish Ministers;

- (b) to a Welsh public authority by a person other than the Welsh Ministers.
- (10) Regulations under this section may require the appropriate authority or a specified person—
  - (a) to give guidance about specified matters;
  - (b) to consult specified persons, or persons of a specified description, before giving guidance by virtue of paragraph (a).
- (11) Regulations under this section may confer functions, including functions involving the exercise of a discretion—
  - (a) in the case of regulations made by the Secretary State, on any person;
  - (b) in any other case, on a person other than a Minister of the Crown.
- (12) The functions that may be conferred on a person by virtue of subsection (11) include a function of giving advice in relation to the application or exercise of any other function, whether exercisable by that or another person, under or by virtue of regulations under this section.
- (13) In this section—
  - “protected site” has the meaning determined in accordance with regulations under this section; and those regulations—
    - (a) must be framed so that protected sites consist of natural habitats or habitats of species, and
    - (b) must in particular include protected marine areas;
  - “qualifying Secretary of State functions” means functions of the Secretary of State in relation to relevant offshore wind activities in (as the case may be) the Welsh inshore region or the Northern Ireland inshore region;
  - “specified” means specified in regulations under this section.

#### **294 Regulations under section 293: consultation and procedure**

- (1) The Secretary of State must, before making regulations under section 293, consult—
  - (a) the Marine Management Organisation,
  - (b) the Joint Nature Conservation Committee,
  - (c) Natural England,
  - (d) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to relevant offshore wind activities or protected sites in Scotland,
  - (e) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to relevant offshore wind activities or protected sites in Wales,
  - (f) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
  - (g) such other persons as the Secretary of State considers appropriate.

- (2) Regulations made by the Secretary of State under section 293 are subject to the affirmative procedure.
- (3) The Scottish Ministers must, before making regulations under section 293, consult—
  - (a) the Secretary of State,
  - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
  - (c) Natural England, so far as the regulations relate to protected sites in England,
  - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
  - (e) Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
  - (f) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales,
  - (g) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
  - (h) such other persons as they consider appropriate.
- (4) Regulations made by the Scottish Ministers under section 293 are subject to the affirmative procedure (see section 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10)).
- (5) The Welsh Ministers must, before making regulations under section 293, consult—
  - (a) the Secretary of State,
  - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
  - (c) Natural England, so far as the regulations relate to protected sites in England,
  - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
  - (e) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
  - (f) the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales,
  - (g) DAERA, so far as the regulations relate to protected sites in Northern Ireland, and
  - (h) such other persons as they consider appropriate.
- (6) The power of the Welsh Ministers to make regulations under section 293 is exercisable by statutory instrument.

- (7) A statutory instrument containing regulations made by the Welsh Ministers under section 293 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) DAERA must, before making regulations under section 293, consult—
  - (a) the Secretary of State,
  - (b) the Marine Management Organisation, so far as the regulations relate to protected sites in England or the Northern Ireland offshore region,
  - (c) Natural England, so far as the regulations relate to protected sites in England,
  - (d) the Joint Nature Conservation Committee, so far as the regulations relate to protected sites in such part of the UK marine area as is beyond the seaward limits of the territorial sea,
  - (e) the Scottish Ministers and Scottish Natural Heritage, so far as the regulations relate to protected sites in Scotland,
  - (f) the Welsh Ministers and the Natural Resources Body for Wales, so far as the regulations relate to protected sites in Wales, and
  - (g) such other persons as DAERA considers appropriate.
- (9) The power of DAERA to make regulations under section 293 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (10) Regulations may not be made under section 293 by DAERA unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (11) In this section, “protected site” has the same meaning as in section 293.

## 295 Interpretation of Chapter 1

- (1) In this Chapter—
  - “adverse environmental effect” has the meaning given by section 291(4);
  - “consent” means any consent, approval, permission, authorisation or confirmation (however described or given) that is required, or otherwise provided for, by or under primary legislation;
  - “DAERA” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
  - “England” includes the English inshore region and the English offshore region;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act);
  - “Northern Ireland” includes the Northern Ireland inshore region;
  - “primary legislation” means—
    - (a) an Act of Parliament,
    - (b) an Act or Measure of Senedd Cymru,
    - (c) an Act of the Scottish Parliament, or

- (d) Northern Ireland legislation;
  - “protected marine area” has the meaning given by section 291(6);
  - “public authority” means –
    - (a) a Minister of the Crown,
    - (b) the Scottish Ministers,
    - (c) the Welsh Ministers,
    - (d) a Northern Ireland department, or
    - (e) any other person with functions of a public nature;
  - “relevant offshore wind activity” has the meaning given by section 290;
  - “Scotland” includes the Scottish inshore region and the Scottish offshore region;
  - “UK marine area” has the meaning given by section 42(1) of the Marine and Coastal Access Act 2009;
  - “Wales” includes the Welsh inshore region and the Welsh offshore region.
- (2) References in this Chapter to the English, Scottish, Welsh or Northern Ireland inshore and offshore regions are to be construed in accordance with the Marine and Coastal Access Act 2009 (see section 322 of that Act).
- (3) References in this Chapter –
- (a) to a Scottish public authority are to the Scottish Ministers or any other public authority whose functions are exercisable only or mainly in or as regards Scotland;
  - (b) to a Welsh public authority are to the Welsh Ministers or any other public authority whose functions are exercisable only or mainly in or as regards Wales;
  - (c) to a Northern Ireland public authority are to a Northern Ireland department or any other public authority whose functions are exercisable only or mainly in or as regards Northern Ireland.

## CHAPTER 2

### OIL AND GAS

#### *Environmental protection*

#### **296 Arrangements for responding to marine oil pollution**

- (1) The Secretary of State may, by regulations, make provision –
- (a) requiring a person responsible for infrastructure or a place to which subsection (2) applies to have an emergency plan setting out arrangements for responding to incidents which cause, or may cause, marine oil pollution,
  - (b) in connection with that requirement, and
  - (c) about the reporting of such incidents.
- (2) This subsection applies to –

- (a) an offshore installation, or an offshore well, that is used for or in connection with—
    - (i) offshore oil and gas operations, or
    - (ii) offshore production or storage of gas;
  - (b) offshore infrastructure, including pipelines, connected to such an installation or well;
  - (c) a harbour;
  - (d) a facility, that is not offshore, for handling or storing oil or gas;
  - (e) infrastructure or a place described in any of paragraphs (a) to (d) that is being decommissioned or has been decommissioned or abandoned.
- (3) Regulations under subsection (1) may, in particular, make provision in connection with the implementation, maintenance and review of an emergency plan, including provision requiring—
- (a) a person to refrain from carrying out activities that may cause marine oil pollution unless and until an emergency plan is in place;
  - (b) an emergency plan to be reviewed in accordance with the regulations;
  - (c) the amendment or replacement of an emergency plan in circumstances specified in the regulations;
  - (d) a person to ensure readiness to carry out an emergency plan;
  - (e) a person to carry out an emergency plan.
- (4) Regulations under subsection (1) about the reporting of incidents may, in particular—
- (a) set out—
    - (i) circumstances in which a report must be made;
    - (ii) by whom a report must be made;
    - (iii) to whom a report must be made;
  - (b) make provision as to the content and form of a report and the time by which a report must be made.
- (5) The Secretary of State may, by regulations, make provision enabling the inspection of infrastructure or a place to which subsection (2) applies.
- (6) Regulations under subsection (1) or (5) may, in particular, make provision—
- (a) about the meaning which any expression used in subsection (1), (2), (3), (4) or (5) is to have for the purposes of regulations under subsection (1) or (5);
  - (b) conferring functions on any person;
  - (c) providing for the charging of fees (but see subsection (7));
  - (d) authorising or requiring, or restricting or prohibiting, the supply or keeping of information (including provision authorising or requiring the supply or keeping of information that would not otherwise be permitted);
  - (e) creating criminal offences or impose civil penalties (but see subsection (8));

- (f) for the purpose of securing compliance with requirements imposed by or under regulations under subsection (1) or (5).
- (7) Regulations under subsection (1) or (5) which provide for a fee to be charged in respect of a person performing a function or doing any other thing must secure that, taking one year with another, the income from the fees does not exceed the cost of performing the function or doing the thing.
- (8) Regulations under subsection (1) or (5) may not provide—
  - (a) for a criminal offence to be punishable with imprisonment;
  - (b) for a civil penalty to exceed £50,000.
- (9) Where regulations under subsection (1) or (5) provide for the imposition of a civil penalty, they must also include provision for a right of appeal against the imposition of the penalty.
- (10) Regulations under subsection (1) or (5) containing any of the following (with or without other provision) are subject to the affirmative procedure—
  - (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
  - (b) provision specifying a civil penalty amount.
- (11) Any other regulations under subsection (1) or (5) are subject to the negative procedure.
- (12) In this section—
  - “gas” means—
    - (a) “gas” within the meaning of section 2 of the Energy Act 2008,
    - (b) carbon dioxide, and
    - (c) hydrogen;
  - “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

## **297 Habitats: reducing effects of offshore oil or gas activities etc**

- (1) The Secretary of State may, by regulations, make provision requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function (including a function under other regulations under this section) which relates to—
  - (a) offshore oil and gas activities, or
  - (b) offshore production or storage of gas.
- (2) The Secretary of State may, by regulations, make provision—
  - (a) prohibiting a specified description of activities from being carried out unless the consent of the Secretary of State has been obtained, and
  - (b) requiring a person who has obtained such a consent to carry out any activity to which the consent relates in accordance with the consent (and any conditions to which the consent is subject).



- (3) The Secretary of State may, by regulations, make provision preventing a specified description of licence from being granted unless the Secretary of State has or Scottish Ministers have –
  - (a) carried out a specified description of assessment, and
  - (b) confirmed that the outcome of that assessment does not prevent the licence from being granted.
- (4) The Secretary of State may, by regulations, make provision –
  - (a) authorising the Secretary of State to give a person directions to take steps, or to refrain from taking steps, and
  - (b) requiring a person given such a direction to comply with it.
- (5) The Secretary of State may make regulations under subsection (2), (3) or (4) only if the Secretary of State considers that the regulations would contribute to the protection of relevant sites from adverse effects of –
  - (a) offshore oil and gas activities, or
  - (b) offshore production or storage of gas.
- (6) For the purposes of regulations made under another provision of this section, “relevant site” has the meaning determined in accordance with the regulations; and those regulations –
  - (a) must be framed so that relevant sites consist of natural habitats or habitats of species;
  - (b) may, where they are framed by reference to provision made by other legislation, be framed so as to include natural habitats or habitats of species that are likely to fall within that provision of that other legislation.
- (7) Regulations under this section may –
  - (a) make provision about the meaning which any expression used in this section is to have for the purposes of regulations under this section;
  - (b) confer functions on any person (including a function of giving advice in relation to the application or exercise of any other function, whether exercisable by that or another person, under regulations under this section);
  - (c) provide for the modification or revocation of any consent given under regulations under subsection (2);
  - (d) provide for the charging of fees;
  - (e) authorise, or restrict or prohibit, the supply or keeping of information (including authorisation of the supply or keeping of information that would not otherwise be permitted);
  - (f) create criminal offences or impose civil penalties (but see subsection (8));
  - (g) make other provision for the purpose of securing compliance with requirements imposed by or under regulations under this section.
- (8) Regulations under this section may not provide –

- (a) for a criminal offence to be punishable with imprisonment or, on summary conviction, to a fine exceeding the statutory maximum;
  - (b) for a civil penalty of a fixed amount to exceed £2,500 or of a variable amount to exceed £50,000.
- (9) Where regulations under this section provide for the imposition of a civil penalty, they must also include provision for a right of appeal against the imposition of the penalty.
- (10) Regulations under this section are subject to the affirmative procedure.
- (11) In this section –
- “licence” means anything (however described) which permits a person to do something;
  - “specified” means specified in regulations under this section.

## **298 Regulations under sections 296 and 297: procedure with devolved authorities**

### *Regulations under section 296*

- (1) Before making regulations under section 296 that contain provision within devolved competence, the Secretary of State must give notice to each relevant devolved authority –
- (a) stating that the Secretary of State proposes to make regulations under that section,
  - (b) setting out or describing the provision that is within the relevant devolved competence, and
  - (c) specifying the period (of not less than 28 days from the date on which the notice is given) within which representations may be made with respect to that provision,
- and must consider any representations duly made and not withdrawn.
- (2) The Secretary of State need not wait until the end of the period specified under subsection (1)(c) before making regulations if, before the end of that period, each relevant devolved authority to which the notice was given has confirmed that it has made any representations it intends to make with respect to the provision referred to in subsection (1)(b).
- (3) The Secretary of State must, if requested to do so by a relevant devolved authority, give the authority a statement setting out whether and how representations made by the authority with respect to the provision referred to in subsection (1)(b) have been taken into account in the regulations.
- (4) In subsections (1) to (3), “relevant devolved authority”, in relation to regulations, means –
- (a) the Scottish Ministers, if the regulations contain provision within Scottish devolved competence;
  - (b) the Welsh Ministers, if the regulations contain provision within Welsh devolved competence;

- (c) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, if the regulations contain provision within Northern Ireland devolved competence;
- and “the relevant devolved competence”, in relation to a relevant devolved authority, is to be construed accordingly.

*Regulations under section 297*

- (5) The Secretary of State may not make regulations under section 297 containing provision within Scottish devolved competence unless the Scottish Ministers have consented to that provision.
- (6) The Secretary of State may not make regulations under section 297 containing provision within Welsh devolved competence unless the Welsh Ministers have consented to that provision.

*Devolved competence*

- (7) For the purposes of this section, provision—
  - (a) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
  - (b) is within Welsh devolved competence if it 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) is within Northern Ireland devolved competence if it—
    - (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 references to provision being within devolved competence are to provision that is within Scottish, Welsh or Northern Ireland devolved competence.

*Decommissioning: charging*

**299 Charges in connection with abandonment of offshore installations**

- (1) In the Petroleum Act 1998, after section 38B insert—

**“38C Charges in connection with exercise of functions under Part 4**

- (1) The Secretary of State may by regulations made by statutory instrument provide for payment to the Secretary of State of charges for or in connection with the carrying out by the Secretary of State of the Secretary of State’s functions under this Part.

- (2) Regulations under this section may provide that a charge is to be of an amount –
    - (a) specified in the regulations, or
    - (b) determined by the Secretary of State in accordance with the regulations.
  - (3) Regulations under this section may specify matters to which the Secretary of State must have regard when determining the amount of a charge.
  - (4) Regulations under this section may specify –
    - (a) how a charge is to be paid;
    - (b) when a charge is to be paid;
    - (c) the person by whom a charge is to be paid.
  - (5) Provision made by virtue of subsection (4)(c) may confer a discretion on the Secretary of State.
  - (6) Regulations under this section may –
    - (a) include incidental, supplementary or consequential provision;
    - (b) include transitory or transitional provision or savings;
    - (c) make different provision for different purposes.
  - (7) Before making regulations under this section, the Secretary of State must consult organisations in the United Kingdom that appear to the Secretary of State to be representative of persons who are likely to be affected by the regulations.
  - (8) The Secretary of State must not make regulations under this section without the consent of the Treasury.
  - (9) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.”
- (2) In section 30 of the Energy Act 2008 (abandonment of installations), in subsection (2)(a), for the words from “the reference” to “Scottish Parliament” substitute “sections 38C(9) and 39(6) of the 1998 Act are to be read as if each of those sections imposed a requirement that regulations under the section concerned are subject to the negative procedure (see section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010)”.
  - (3) The Petroleum Act 1998 is amended as follows in consequence of subsection (1).
  - (4) In section 29 (preparation of programmes), omit subsection (5).
  - (5) In section 33(4) (failure to submit programmes), for the words from “any fee” to the end substitute “any charge that would have been payable by those persons in accordance with regulations under section 38C if they had complied with the notice under section 29(1)”.

- (6) In section 34(4) (revision of programmes), omit the words from “and a person” to the end.
- (7) In section 39 (regulations) –
  - (a) in subsection (2), omit paragraph (e);
  - (b) in subsection (5), omit the words from “and he” to the end.

*Change in control of licensee*

**300 Model clauses of petroleum licences**

- (1) Schedule 21 amends model clauses contained in –
  - (a) the Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436),
  - (b) the Petroleum (Current Model Clauses) Order 1999 (S.I. 1999/160),
  - (c) the Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (S.I. 2004/352),
  - (d) the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225), and
  - (e) the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686).
- (2) Where a licence granted (or having effect as if granted) by the Oil and Gas Authority under the Petroleum (Production) Act 1934 or the Petroleum Act 1998 –
  - (a) incorporates model clauses amended by a paragraph of Schedule 21 (whether or not any provision of those model clauses is modified or excluded), and
  - (b) is in force immediately before that paragraph comes into force, the licence has effect with the amendments provided for by that paragraph.
- (3) The power conferred by reason of the amendment made by paragraph 70(2) of Schedule 21 to partially revoke a licence because of the occurrence of an event mentioned in model clause 41(2)(h) in Schedule 2 to the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 may not be exercised as a result of such an event which occurred before the commencement of paragraph 70 of Schedule 21.
- (4) A reference in any document to provisions of a licence which are amended by Schedule 21 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended.
- (5) A provision inserted in a licence by virtue of Schedule 21 may be altered or deleted by deed executed by the Secretary of State and the licensee or, as respects Scotland, by an instrument subscribed or authenticated by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995.

### **301 Power of OGA to require information about change in control of licensee**

After section 5C of the Petroleum Act 1998 insert –

#### **“5D OGA’s power to require information about change in control of licensee**

- (1) This section applies in relation to a licence granted (or having effect as if granted) by the OGA under this Part which includes provisions prohibiting a change in control of a licensee which is a company without the OGA’s consent.
- (2) The OGA may by notice in writing require a person within subsection (3) to provide the OGA with any information that it requires for the purpose of exercising its functions in relation to a change or potential change in control of a licensee which is a company.
- (3) The persons within this subsection are –
  - (a) the company;
  - (b) the person who (if consent were granted) would take control of the company;
  - (c) if the company and another person or persons are the licensee, that other person or those other persons;
  - (d) any person not within any of paragraphs (a) to (c) who appears to the OGA to have information that it requires as mentioned in subsection (2).
- (4) The power conferred by this section does not include power to require the provision of any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications.
- (5) Nothing in this section limits any power of the OGA to require information under –
  - (a) regulations under this Part, or
  - (b) the terms of a licence under this Part.”

## **PART 14**

### **CIVIL NUCLEAR SECTOR**

#### **CHAPTER 1**

##### **CIVIL NUCLEAR SITES**

### **302 Application to the territorial sea of requirement for nuclear site licence**

- (1) The Nuclear Installations Act 1965 is amended in accordance with subsections (2) and (3).

- (2) In section 1 (restriction of certain nuclear installations to licensed sites), after subsection (11) insert –
  - “(12) In this section, “site” includes a site situated wholly or partly in or under the territorial sea adjacent to the United Kingdom.”
- (3) In section 26(1) (interpretation), in the definition of “the appropriate national authority” –
  - (a) in paragraph (a), after “Scotland” insert “(including the territorial sea adjacent to them)”;  
(b) in paragraph (b), after “Northern Ireland” insert “(including the territorial sea adjacent to it)”.
- (4) In section 68 of the Energy Act 2013 (nuclear safety purposes), after subsection (3) insert –
  - “(4) In the definition of “relevant nuclear installation” in subsection (3), the reference to a site in England, Wales or Scotland includes a site situated wholly or partly in or under the territorial sea adjacent to them.”

### **303 Decommissioning of nuclear sites etc**

- (1) The Nuclear Installations Act 1965 is amended as follows.
- (2) In section 1 (restriction of certain nuclear installations to licensed sites), after subsection (12) (inserted by section 302 of this Act) insert –
  - “(13) The reference in subsection (1) to operating a nuclear reactor or an installation of a prescribed kind includes a reference to decommissioning a nuclear reactor or such an installation.”
- (3) In section 3 (grant and variation of nuclear site licences) –
  - (a) in subsection (12)(b), for the words from “there” to the end substitute “the applicable condition or conditions set out in section 3A are met.”;
  - (b) after subsection (12) insert –
    - “(12A) The appropriate national authority must consult the Health and Safety Executive before varying a nuclear site licence under subsection (12).”

- (4) After section 3 insert –

#### **“3A Exclusion of part of site from licence: applicable conditions**

- (1) This section sets out the applicable condition or conditions for excluding any part of a licensed site (“the relevant part”) from a nuclear site licence.
- (2) Where a prescribed disposal installation is or has at any time been situated within the relevant part, the applicable condition is that there is no danger from ionising radiations from anything on the relevant part.

- (3) Where any nuclear installation, other than a prescribed disposal installation, is or has at any time been situated within the relevant part, the applicable conditions (subject to subsection (5)) are that—
- (a) the use of any such installation within the relevant part has permanently ceased,
  - (b) appropriate measures for the containment and control of any remaining radioactivity are in place,
  - (c) the relevant part meets the radioactivity exclusion criteria and the dose exclusion criteria, and
  - (d) it is no longer necessary or desirable in the interests of safety for a nuclear site licence to be in force in respect of the relevant part.
- (4) In any other case, the applicable conditions (subject to subsection (5)) are that—
- (a) the relevant part meets the dose exclusion criteria, and
  - (b) it is no longer necessary or desirable in the interests of safety for a nuclear site licence to be in force in respect of the relevant part.
- (5) In a case to which, but for this subsection, subsection (3) or (4) would apply, the licensee may elect that the condition set out in subsection (2) is to apply to the relevant part (instead of the conditions in subsection (3) or (4)).
- (6) In this section—
- “2014 Decision” means the Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned, published on 30 October 2014 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development;
  - “dose exclusion criteria” means the criteria described in paragraph 3(b) of the Appendix to the 2014 Decision;
  - “prescribed disposal installation” means an installation—
    - (a) designed or adapted for the disposal of nuclear matter, and
    - (b) of a kind prescribed under section 1(1)(b) at any time after section 303 of the Energy Act 2023 comes into force;
  - “radioactivity exclusion criteria” means the criteria described in paragraph 3(a) of the Appendix to the 2014 Decision;
  - “safety”, in relation to the relevant part of a site, is to be construed in accordance with section 4(2).”
- (5) In section 5 (revocation and surrender of licences)—
- (a) in the heading, omit “and surrender”;



- (b) in subsection (1) –
  - (i) omit the “or” after paragraph (a);
  - (ii) omit paragraph (b);
- (c) in subsection (2), after “consult” insert “the Health and Safety Executive and”;
- (d) in subsection (3), omit “or surrendered”;
- (e) in subsection (15)(a), for the words from “that in the authority’s opinion” to the end substitute “ –
  - (i) as respects the licensee’s period of responsibility for the licensed site, that in the authority’s opinion each part of the site meets the condition or conditions set out in section 5A that apply in relation to that part of the site, or
  - (ii) as respects the licensee’s period of responsibility for any part of the site, that in the authority’s opinion the part in question meets the condition or conditions set out in section 5A that apply in relation to that part.”;
- (f) after subsection (15)(b) insert –
  - “(ba) the date when a person (whether the licensee or some other person) becomes the operator of a relevant disposal site comprising the site in question or, as the case may be, that part of it;
  - (bb) the date when the site or, as the case may be, the part of it in question becomes an excluded disposal site;”.
- (6) After section 5 insert –

**“5A End of period of responsibility: applicable conditions**

- (1) This section sets out the applicable condition or conditions for determining when a licensee’s period of responsibility for a part of a licensed site (“the relevant part”) ends under section 5(15)(a)(i) or (ii).
- (2) Where a prescribed disposal installation or a licensed disposal site is or has at any time been situated within the relevant part, the applicable condition is that there is no danger from ionising radiations from anything on the relevant part.
- (3) Where any nuclear installation, other than a prescribed disposal installation, is or has at any time been situated within the relevant part, the applicable conditions (subject to subsection (5)) are that –
  - (a) the use of any such installation within the relevant part has permanently ceased,
  - (b) appropriate measures for the containment and control of any remaining radioactivity are in place, and
  - (c) the relevant part meets the radioactivity exclusion criteria and the dose exclusion criteria.

- (4) In any other case, the applicable condition (subject to subsection (5)) is that the relevant part meets the dose exclusion criteria.
- (5) In a case to which, but for this subsection, subsection (3) or (4) would apply, the licensee may elect that the condition set out in subsection (2) is to apply to the relevant part (instead of the conditions in subsection (3) or (4)).
- (6) In this section –
- “2014 Decision” means the Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned, published on 30 October 2014 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development;
- “dose exclusion criteria” means the criteria described in paragraph 3(b) of the Appendix to the 2014 Decision;
- “licensed disposal site” means a site that would be, or would at any time have been, a relevant disposal site but for section 7B(5)(a) (nuclear site licence granted in respect of site);
- “prescribed disposal installation” means an installation –
- (a) designed or adapted for the disposal of nuclear matter, and
- (b) of a kind prescribed under section 1(1)(b) at any time after section 303 of the Energy Act 2023 comes into force;
- “radioactivity exclusion criteria” means the criteria described in paragraph 3(a) of the Appendix to the 2014 Decision.”
- (7) In section 7B (duties in respect of relevant disposal sites) –
- (a) after subsection (2) insert –
- “(2A) The operator of a site that would be a relevant disposal site but for subsection (5)(a) is to be treated for the purposes of subsection (2)(a)(ii) as becoming the operator of the site on the date when –
- (a) the nuclear site licence in question is varied under section 3(12) to exclude the site from it, or
- (b) the nuclear site licence in question is revoked under section 5(1).”;
- (b) in subsection (5)(a), after “granted” insert “(subject to subsection (5A))”;
- (c) after subsection (5) insert –
- “(5A) Subsection (5)(a) does not apply where a licence has ceased to be in force in respect of the site as a result of section 3(12) (exclusion of part of site from licence) or section 5(1) (revocation of licence).”

- (8) In section 27(1) (application of Act to Northern Ireland), after paragraph (a) insert –

“(aa) a reference to the Health and Safety Executive is to be construed as a reference to the Health and Safety Executive for Northern Ireland.”

### 304 Excluded disposal sites

- (1) The Nuclear Installations Act 1965 is amended as follows.

- (2) In section 7B (duties in respect of relevant disposal sites) –

- (a) after subsection (2A) (inserted by section 303 of this Act) insert –

“(2B) The operator of a site that would be a relevant disposal site but for subsection (7A) is to be treated for the purposes of subsection (2)(a)(ii) as becoming the operator of the site on the date when the site ceases to be an excluded disposal site.”;

- (b) after subsection (3)(d) insert –

“(e) the date when the Secretary of State gives notice under section 7C(1)(b) that the site is an excluded disposal site.”;

- (c) after subsection (3) insert –

“(3A) Where a site to which subsection (2B) applies was a relevant disposal site before it became an excluded disposal site, subsection (2) has effect in respect of –

- (a) the period beginning by virtue of subsection (2)(a), and  
(b) any further period beginning by virtue of subsection (2B).”;

- (d) in subsection (4), for “and (7)” substitute “, (7) and (7A)”;

- (e) after subsection (7) insert –

“(7A) A site is not a relevant disposal site if it is an excluded disposal site.”;

- (f) in subsection (9), in the definition of “appropriate permit” –

- (i) after paragraph (a) insert –

“(aa) in relation to a site in Scotland, a permit under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014 (2014 asp 3) authorising a person to use the site for the disposal of radioactive waste”;

- (ii) in paragraph (b), omit “Scotland or”.

(3) After section 7B insert—

**“7C Excluded disposal sites**

- (1) A site that is used or intended to be used for the operation of an installation for the disposal of nuclear matter is an excluded disposal site if—
  - (a) the Secretary of State is satisfied, on an application by the operator of the site, that the site meets—
    - (i) the permit condition,
    - (ii) the site history condition, and
    - (iii) such other conditions as may be prescribed, and
  - (b) the Secretary of State gives the operator notice in writing to that effect.
- (2) In this section, “disqualifying matter” means nuclear matter that exceeds the radioactivity concentration limits set out in paragraph 3(a) of the Appendix to the 2016 Decision.
- (3) The permit condition is that—
  - (a) an appropriate permit is in force in respect of the site, and
  - (b) that permit includes a condition preventing the site from receiving disqualifying matter.
- (4) The site history condition is that—
  - (a) disqualifying matter has not at any time been accepted for disposal at the site, or
  - (b) any disqualifying matter previously accepted for disposal at the site has been removed from the site.
- (5) An application under subsection (1)(a) must be accompanied by such documents as may be prescribed.
- (6) Regulations made under subsection (5) may—
  - (a) specify requirements relating to the preparation, approval or review of a prescribed document;
  - (b) require an operator to provide a copy of a prescribed document to a person other than the Secretary of State;
  - (c) make different provision for different purposes.
- (7) A site ceases to be an excluded disposal site if the site no longer meets the permit condition or any condition prescribed under subsection (1)(a)(iii).
- (8) Where the appropriate permit in force in respect of an excluded disposal site is transferred to a new operator, the site ceases to be an excluded disposal site at the end of the period of one month beginning with the date on which the permit is transferred unless, before the end of that period—

- (a) the new operator notifies the Secretary of State of the transfer, and
  - (b) the Secretary of State gives the new operator notice in writing that the Secretary of State consents to the site continuing to be an excluded disposal site.
- (9) The Secretary of State must notify the Scottish Ministers of any notification given under subsection (1)(b) in relation to a site in Scotland.
- (10) In this section –
  - “2016 Decision” means the Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste published on 16 January 2017 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development;
  - “appropriate permit” has the meaning given in section 7B(9).

#### **7D Excluded disposal sites: acceptance of disqualifying matter**

- (1) This section applies where disqualifying matter is accepted at an excluded disposal site; and for the purposes of this section the acceptance of such matter is referred to as “the breach”.
- (2) The operator of the site must notify the Secretary of State of the breach before the end of the notification period.
- (3) “The notification period” means the period of 21 days beginning with the day on which the operator becomes aware of the breach.
- (4) The site ceases to be an excluded disposal site at the end of the notification period unless the operator complies with the duty under subsection (2).
- (5) An operator who has complied with the duty under subsection (2) must remove the disqualifying waste from the site before the end of the removal period.
- (6) “The removal period” means –
  - (a) the period of 90 days beginning with the day on which the operator notifies the Secretary of State of the breach, or
  - (b) such longer period as the Secretary of State may specify before the end of the period mentioned in paragraph (a) if satisfied that the operator is taking all reasonable steps to remove the disqualifying matter from the site.
- (7) The site ceases to be an excluded disposal site at the end of the removal period unless before the end of that period –

- (a) the Secretary of State is satisfied that the disqualifying waste has been removed from the site, and
  - (b) the Secretary of State gives the operator notice in writing to that effect.
- (8) In this section, “disqualifying matter” has the meaning given by section 7C.”
- (4) In section 20 (furnishing of information relating to operator’s cover), after subsection (5) insert –
  - “(5A) Subsection (4) does not apply where the operator of a relevant disposal site makes an application to the Secretary of State under section 7C(1)(a) (application for site to be excluded disposal site).”
- (5) In section 26(1) (interpretation), at the appropriate place insert –
  - ““excluded disposal site” has the meaning given by section 7C;”.

### **305 Accession to Convention on Supplementary Compensation for Nuclear Damage**

Schedule 22 contains amendments to the Nuclear Installations Act 1965 to implement the Convention on Supplementary Compensation for Nuclear Damage.

### **306 Power to implement Convention on Supplementary Compensation for Nuclear Damage**

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate –
  - (a) to implement the CSC, or
  - (b) otherwise for the purposes of dealing with any other matter arising out of, or related to, the CSC.
- (2) The provision that may be made by virtue of subsection (1) includes provision that is authorised by the CSC to be made in relation to a particular matter.
- (3) Regulations under this section may amend –
  - (a) Schedule 22,
  - (b) the Nuclear Installations Act 1965, or
  - (c) any other enactment having effect in relation to a matter to which the CSC relates.
- (4) In this section, “the CSC” means the Convention on Supplementary Compensation for Nuclear Damage (as amended or supplemented from time to time).
- (5) Regulations under this section are subject to the affirmative procedure.

## CHAPTER 2

### CIVIL NUCLEAR CONSTABULARY

#### 307 Provision of additional police services

- (1) After section 55 of the Energy Act 2004 insert—

*“Additional services*

#### 55A Provision of additional police services

- (1) The Constabulary may, with the consent of the Secretary of State, provide additional police services to any person.
- (2) In this Chapter, “additional police services” means services relating to the protection of places, persons or materials.
- (3) In subsection (2), “place” includes—
  - (a) premises, facilities or equipment at a place;
  - (b) any vehicle, vessel, aircraft or hovercraft.
- (4) The Secretary of State must not give consent for the purposes of subsection (1) unless satisfied, on an application made by the Police Authority, that—
  - (a) the provision of the additional police services in question is in the interests of national security,
  - (b) the provision by the Constabulary of those services will not prejudice the carrying out of its primary function under section 52(2), and
  - (c) it is reasonable in all the circumstances for the Constabulary to provide those services.
- (5) Before giving consent for the purposes of subsection (1), the Secretary of State must consult the chief constable.
- (6) The chief constable must ensure that the provision by the Constabulary of additional police services does not prejudice the carrying out of its primary function under section 52(2).
- (7) Consent given for the purposes of subsection (1)—
  - (a) must specify the period of time (not exceeding 5 years) for which it has effect;
  - (b) may, subject to subsections (8) and (9), be withdrawn at any time if the Secretary of State is no longer satisfied of the matters mentioned in subsection (4).
- (8) Where the Secretary of State proposes to withdraw consent given for the purposes of subsection (1), the Secretary of State must consult the Police Authority.

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- (9) If, following consultation under subsection (8), the Secretary of State decides to withdraw consent given for the purposes of subsection (1), the Secretary of State must give such notice to the Police Authority as is reasonably practicable of the date on which the consent will cease to have effect.
  - (10) The Police Authority may enter into an agreement with any person for the provision of additional police services by the Constabulary under this section.
  - (11) The Police Authority must publish, as soon as is reasonably practicable and in such manner as the Authority considers appropriate—
    - (a) the name of any person or persons to whom additional police services are to be provided under this section, and
    - (b) (subject to subsections (12) and (13)) such information about the place or places at which those services are to be provided as the Police Authority considers may be published without prejudicing the interests of national security.
  - (12) The Police Authority must consult the Secretary of State before publishing the information referred to in subsection (11)(b).
  - (13) The Secretary of State may direct the Police Authority not to publish information about the place or places at which additional police services are to be provided where the Secretary of State considers that publication of the information would prejudice the interests of national security.
  - (14) The Police Authority must comply with a direction given by the Secretary of State under subsection (13).”
- (2) In section 56 of that Act (jurisdiction of Constabulary), after subsection (3) insert—
    - “(3A) A member of the Constabulary has the powers and privileges of a constable at every place where additional police services are being provided under section 55A.”
  - (3) In section 71(1) of that Act (interpretation), at the appropriate place insert—
    - ““additional police services” has the meaning given in section 55A(2);”.
  - (4) The Counter-Terrorism Act 2008 is amended as follows—
    - (a) in section 85(2) (costs of policing at gas facilities: England and Wales), after paragraph (a) omit “or” and insert—
      - “(aa) the services of the Civil Nuclear Constabulary provided under section 55A of the Energy Act 2004, or”;
    - (b) in section 86(2) (costs of policing at gas facilities: Scotland), after paragraph (a) omit “or” and insert—
      - “(aa) the services of the Civil Nuclear Constabulary provided under section 55A of the Energy Act 2004, or”.



### 308 Provision of assistance to other forces

- (1) The Energy Act 2004 is amended as follows.
- (2) After section 55A (inserted by section 307 of this Act) insert—

#### “55B Provision of assistance to other forces

- (1) The chief constable may, on the application of the chief officer of a relevant force, provide members of the Constabulary or other assistance for the purpose of enabling that force to meet any special demand on its resources.
- (2) The policing body maintaining a relevant force for which assistance is provided under this section must pay to the Police Authority such charges—
  - (a) as may be agreed between the policing body and the Police Authority, or
  - (b) in the absence of any such agreement, as may be determined by the Secretary of State.
- (3) The chief constable must ensure that the provision of assistance under this section does not prejudice the carrying out of the primary function of the Constabulary under section 52(2).
- (4) In this section—
  - “chief officer” means—
    - (a) a chief officer of police of a police force for a police area in England and Wales;
    - (b) the chief constable of the Police Service of Scotland;
    - (c) the chief constable of the British Transport Police Force; or
    - (d) the chief constable of the Ministry of Defence Police;
  - “policing body” means—
    - (a) in relation to a police force for a police area in England and Wales, the relevant local policing body in the meaning of section 101(1) of the Police Act 1996;
    - (b) in relation to the Police Service of Scotland, the Scottish Police Authority;
    - (c) in relation to the British Transport Police Force, the British Transport Police Authority;
    - (d) in relation to the Ministry of Defence Police, the Secretary of State;
  - “relevant force” means—
    - (a) a police force for a police area in England and Wales;
    - (b) the Police Service of Scotland;
    - (c) the British Transport Police Force; or

(d) the Ministry of Defence Police.”

- (3) In section 59 (members of constabulary serving with other forces), after subsection (3) insert –

“(3A) For the purposes of this section, a member of the Constabulary who is provided for the assistance of a relevant force under section 55B is to be treated as serving with that force under arrangements of the kind mentioned in subsection (1).”

### **309 Cross-border enforcement powers**

- (1) Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement) is amended as follows.
- (2) In section 136 (execution of warrants) –
- (a) in subsection (1), after “2003” insert “or under section 55 of the Energy Act 2004”;
  - (b) in subsection (2), after “2003” insert “or under section 55 of the Energy Act 2004”.
- (3) In section 137(2A) (cross-border powers of arrest), after “2003” insert “or under section 55 of the Energy Act 2004”.
- (4) In section 137A(5) (additional cross-border powers of arrest: urgent cases), after “2003” insert “or under section 55 of the Energy Act 2004”.
- (5) In section 139 (search powers available on arrest) –
- (a) in subsection (10A), after “British Transport Police” insert “or a constable appointed as a member of the Civil Nuclear Constabulary”;
  - (b) in subsection (10C), after “British Transport Police” insert “or a constable appointed as a member of the Civil Nuclear Constabulary”.
- (6) In section 140(6A) (reciprocal powers of arrest), after “2003” insert “or under section 55 of the Energy Act 2004”.

### **310 Publication of three-year strategy plan**

- (1) Schedule 12 to the Energy Act 2004 (planning and reports about Constabulary) is amended as follows –
- (a) in paragraph 3(1) –
    - (i) for “financial year” substitute “three-year period”;
    - (ii) for “the three year period beginning with that year” substitute “that period”;
  - (b) for paragraph 3(5) substitute –

“(5) In sub-paragraph (1), “three-year period” means –

    - (a) the period of three successive financial years beginning with 1 April 2024, and

- (b) each subsequent period of three successive financial years.”
- (2) In consequence of the amendments made by subsection (1) –
  - (a) in section 54(1)(b) of the Energy Act 2004 (functions of senior officers), omit “most recently”;
  - (b) in Schedule 12 to that Act –
    - (i) in paragraph 2(3), omit “most recently”;
    - (ii) in paragraph 7(2)(a), omit “most recently issued”.

### CHAPTER 3

#### RELEVANT NUCLEAR PENSION SCHEMES

#### **311 Civil nuclear industry: amendment of relevant nuclear pension schemes**

- (1) The Secretary of State may by regulations make provision requiring a designated person to amend the provisions of a relevant nuclear pension scheme in respect of which the person is designated –
  - (a) for the purpose of making scheme-specific changes;
  - (b) for the purpose of making changes that relate to any scheme-specific changes;
  - (c) for the purpose of making contribution rate adjustments.
- (2) “Scheme-specific changes”, in relation to a relevant nuclear pension scheme, are changes that –
  - (a) relate to defined benefits for members of the scheme, and
  - (b) are in connection with one or more of the matters mentioned in subsection (3).
- (3) Those matters are –
  - (a) securing that the structure under which the defined benefits in question accrue is a career average revalued earnings structure (in particular where it would otherwise be a final salary structure);
  - (b) providing for other changes to the amounts of such of those defined benefits as are payable in respect of members of the scheme;
  - (c) providing for revaluations of pensionable earnings, or of benefits in deferment or pensions in payment, to be by reference to the consumer prices index (and not the retail prices index) but not involving imposing a cap on any revaluation or revaluation rate;
  - (d) setting percentage rates, for contributions to the scheme by members of the scheme, that are higher than they would otherwise be;
  - (e) setting periods for which contributions to the scheme by members of the scheme are required to be made that are longer than they would otherwise be.
- (4) Amendments made by virtue of subsection (1)(b) may include amendments relating to benefits provided under the scheme other than defined benefits.

- (5) “Contribution rate adjustments” means such adjustments—
- (a) to the rates of contributions to the scheme by its members in respect of defined benefits, or
  - (b) to the salary bands to which such contribution rates apply,
- as are considered appropriate by the designated person (acting on actuarial advice) to ensure that the average contribution rate for members of the scheme in respect of defined benefits is as close as reasonably practicable to 8.2%.
- (6) Where a person is required by regulations under this section to amend the provisions of a relevant nuclear pension scheme, the amendments may be made—
- (a) free from any consent requirements set out in the scheme, and
  - (b) notwithstanding provision made by or under any other Act of Parliament, or any rule of law, that would otherwise prevent or limit, or impose conditions on, the making of the amendments.
- (7) Amendments made by virtue of subsection (1)(a)—
- (a) must not relate to service prior to the date on which the amendments are made;
  - (b) may be made in the case of a particular scheme on one occasion only.
- (8) Nothing in this section limits any power that a designated person has to amend a relevant nuclear pension scheme.
- (9) A person may not be designated in relation to a relevant nuclear pension scheme unless it appears to the Secretary of State that the person has the power to amend the scheme.
- (10) In this section, “designated” means designated by regulations under this section.

### **312 Meaning of “relevant nuclear pension scheme”**

- (1) In this Chapter, “relevant nuclear pension scheme” means—
- (a) a pension scheme maintained by or on behalf of the NDA under or by virtue of section 8(1)(a) or (b) of the Energy Act 2004, or
  - (b) subject to subsections (2) and (3), a scheme that provides for the payment of pensions or other benefits to or in respect of persons who are, or have been, employed to perform duties relating to matters that correspond or are similar to matters in respect of which the NDA has functions.
- (2) A scheme of a kind mentioned in subsection (1)(b) is a relevant nuclear pension scheme only to the extent that the pensions or other benefits are provided in connection with employment by a person with public functions.
- (3) Subsection (1)(b) does not apply to—
- (a) a UKAEA pension scheme (within the meaning given by paragraph 1(1) of Schedule 8 to the Energy Act 2004);

- (b) a scheme that provides for the payment of pensions or other benefits to or in respect of persons specified in section 1(2) of the Public Service Pensions Act 2013 (schemes for persons in public service).

- (4) In this section, “the NDA” means the Nuclear Decommissioning Authority.

### **313 Information**

- (1) This section applies where a person (“P”) is required by regulations under section 311 to amend a relevant nuclear pension scheme.
- (2) P may require a person who holds relevant information to provide it to P.
- (3) “Relevant information” means any information or data that P reasonably requires in connection with deciding whether, or how, to amend the scheme.
- (4) Except as provided by subsection (5), the disclosure of information under this section does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (5) This section does not require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, a requirement imposed under subsection (2) is to be taken into account).

### **314 Further definitions**

- (1) This section applies for the purposes of this Chapter.
- (2) References to the amendment of a relevant nuclear pension scheme include references to the amendment of any one or more of the following—
  - (a) the trust deed of the scheme, if there is one;
  - (b) rules of the scheme;
  - (c) any other instrument relating to the constitution, management or operation of the scheme.
- (3) References to a relevant nuclear pension scheme include references to any section into which the scheme is divided.
- (4) A “career average revalued earnings structure” is a structure where—
  - (a) the pension payable to or in respect of a person, so far as it is based on the person’s pensionable service, is determined by reference to the person’s pensionable earnings in each year of pensionable service, and
  - (b) those earnings, or a proportion of those earnings accrued as a pension, are under the structure revalued each year until the person leaves pensionable service.
- (5) “Consumer prices index” means—

- (a) the general index of consumer prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board.
- (6) “Defined benefits” are benefits –
- (a) that are not money purchase benefits (within the meaning of the Pension Schemes Act 1993), and
  - (b) that are not provided under an injury or compensation scheme (within the meaning of the Public Service Pensions Act 2013).
- (7) A “final salary structure” is a structure where entitlement to the pension payable to or in respect of a person which is based on the pensionable service of that person is or may be determined to any extent by reference to the person’s final salary; and “final salary” here means the person’s pensionable earnings, or highest, average or representative pensionable earnings, in a specified period ending at, or defined by reference to, the time when the person’s pensionable service in relation to the structure terminates.
- (8) “Retail prices index” means –
- (a) the general index of retail prices (for all items) published by the Statistics Board, or
  - (b) where that index is not published for a month, any substituted index or figures published by the Board.

### **315 Application of relevant pensions legislation**

- (1) The Secretary of State may by regulations make –
- (a) such provision about the application of relevant pensions legislation in relation to persons of a specified description, or
  - (b) such amendments of relevant pensions legislation,
- as the Secretary of State considers appropriate for the purposes of or in connection with the amendment of a relevant nuclear pension scheme in pursuance of regulations under section 311.
- (2) In this section –
- “relevant pensions legislation” means –
    - (a) Schedule 8 to the Energy Act 2004 (pensions), or
    - (b) regulations made under Schedule 14 or 15 to the Electricity Act 1989 (the Electricity Supply Pension Scheme etc);
  - “specified” means specified in regulations under subsection (1).

### **316 Procedure for regulations under Chapter 3**

- (1) Regulations under this Chapter are subject to the affirmative procedure.
- (2) If, apart from this subsection, a draft of an instrument containing regulations under this Chapter 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.

## CHAPTER 4

### GREAT BRITISH NUCLEAR

#### *Great British Nuclear: designation, status and objects*

#### **317 Great British Nuclear**

- (1) The Secretary of State may by notice designate a company as Great British Nuclear.
- (2) A company may be designated under this section only if—
  - (a) it is limited by shares, and
  - (b) it is wholly owned by the Crown.
- (3) A notice under subsection (1)—
  - (a) must specify the time from which the designation has effect, and
  - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.
- (4) The designation of a company terminates—
  - (a) if it ceases to be wholly owned by the Crown, or
  - (b) if the Secretary of State revokes its designation by notice.
- (5) A notice under subsection (4)(b)—
  - (a) must specify the time from which the revocation has effect, and
  - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.
- (6) For the purposes of this section a company is wholly owned by the Crown if each share in the company is held by—
  - (a) a Minister of the Crown,
  - (b) the Nuclear Decommissioning Authority established by section 1 of the Energy Act 2004,
  - (c) the United Kingdom Atomic Energy Authority established by section 1 of the Atomic Energy Authority Act 1954,
  - (d) a company which is wholly owned by the Crown, or
  - (e) a nominee of a person falling within any of paragraphs (a) to (d).
- (7) A company designated as Great British Nuclear under this section is exempt from the requirement in section 59 of the Companies Act 2006 (requirement as to use of “limited” in company name).
- (8) In this section—

“company” means a company registered under the Companies Act 2006;

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act).

### **318 Crown status**

- (1) Great British Nuclear is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (2) Great British Nuclear’s property is not to be regarded as property of, or property held on behalf of, the Crown.

### **319 Great British Nuclear’s objects**

Great British Nuclear’s objects are to facilitate the design, construction, commissioning and operation of nuclear energy generation projects for the purpose of furthering any policies published by His Majesty's government.

*Financial assistance and directions etc*

### **320 Financial assistance**

- (1) The Secretary of State may provide financial assistance—
  - (a) to Great British Nuclear, or
  - (b) to any other person to facilitate the design, construction, commissioning and operation of nuclear energy generation projects.
- (2) Financial assistance under this section may be provided in any form and in particular may be provided—
  - (a) by way of grant, loan, guarantee or indemnity,
  - (b) by the acquisition of shares or any other interest in, or securities of, a body corporate,
  - (c) by the acquisition of any undertaking or of any assets,
  - (d) pursuant to a contract, or
  - (e) by incurring expenditure for the benefit of the person assisted.
- (3) Financial assistance under this section may be provided subject to such conditions as the Secretary of State considers appropriate, which may include—
  - (a) conditions about repayment with or without interest or other return, or
  - (b) conditions with which Great British Nuclear or any recipient of financial assistance under subsection (1)(b) must comply if the financial assistance is used for—
    - (i) acquiring shares or any other interest in, or securities of, a body corporate, or
    - (ii) participating in a partnership or joint venture.



- (4) The power to provide financial assistance under this section is in addition to (and does not limit or replace) any other power of a Minister of the Crown to provide financial assistance.
- (5) In this section—
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act);
  - “partnership” means—
    - (a) a partnership within the meaning of the Partnership Act 1890, or
    - (b) a limited partnership within the meaning of the Limited Partnerships Act 1907.

### **321 Secretary of State directions and guidance**

- (1) The Secretary of State may from time to time give Great British Nuclear directions or guidance.
- (2) Before giving a direction or issuing guidance the Secretary of State must consult Great British Nuclear and such other persons as the Secretary of State considers appropriate.
- (3) Directions may be general or particular in character.
- (4) Great British Nuclear must—
  - (a) comply with any directions given to it under this section, and
  - (b) have regard to any guidance given to it under this section.
- (5) The Secretary of State must—
  - (a) publish and lay before Parliament any directions given to Great British Nuclear under this section, and
  - (b) publish any guidance given to Great British Nuclear under this section.

#### *Annual report and accounts*

### **322 Annual report**

- (1) Great British Nuclear must, after the end of each reporting year, send a report to the Secretary of State about the activities it has undertaken during that year.
- (2) The Secretary of State must lay a copy of the report before Parliament together with any comments that the Secretary of State considers appropriate.
- (3) In this section “reporting year”, in relation to Great British Nuclear, means a period of 12 months ending with 31 March (but does not include any period before its designation as Great British Nuclear).

### **323 Annual accounts**

- (1) Great British Nuclear must send a copy of its accounts and reports for each financial year to the Secretary of State before the end of the period for filing those accounts and reports.
- (2) The Secretary of State must lay a copy of any accounts and reports received under subsection (1) before Parliament.
- (3) In this section—
  - “accounts and reports”, in relation to Great British Nuclear, means the annual accounts and reports that Great British Nuclear’s directors must deliver to the registrar under section 441 of the Companies Act 2006;
  - “financial year”, in relation to Great British Nuclear, means Great British Nuclear’s financial year determined in accordance with section 390 of the Companies Act 2006;
  - “period for filing”, in relation to accounts and reports for a financial year, has the same meaning as in the Companies Acts (see section 442 of the Companies Act 2006);
  - “the registrar” has the meaning given by section 1060(3) of the Companies Act 2006.

#### *Transfers and pension arrangements etc*

### **324 Transfer schemes**

- (1) The Secretary of State may make one or more schemes for the transfer of property, rights and liabilities—
  - (a) to a GBN body or a proposed GBN body from—
    - (i) a former GBN body;
    - (ii) a GBN body;
    - (iii) a proposed GBN body;
    - (iv) a Minister of the Crown or Crown body;
    - (v) a designated BNFL body;
    - (vi) an NDA body;
    - (vii) a UKAEA body;
    - (viii) a nominee of a person falling within any of sub-paragraphs (i) to (vii);
  - (b) to a former GBN body, a Minister of the Crown or Crown body, a designated BNFL body or a public body from—
    - (i) a former GBN body;
    - (ii) a GBN body.
- (2) The things that may be transferred under a transfer scheme include—
  - (a) rights and liabilities relating to a contract of employment;
  - (b) property, rights and liabilities that could not otherwise be transferred;

- (c) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (d) criminal liabilities.
- (3) A transfer scheme may –
- (a) create rights, or impose liabilities, in relation to property, rights or liabilities transferred;
  - (b) make provision about the continuing effect of things done by a transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of or in relation to a transferor in respect of anything transferred;
  - (d) make provision for references to a transferor in an instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) make provision for shared ownership or use of the property;
  - (f) make provision for apportioning property, rights or liabilities;
  - (g) require a transferor, an associate of a transferor, or a transferee, to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme;
  - (h) make provision for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
  - (i) make provision 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;
  - (j) make provision for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
  - (k) make provision for reimbursing any person in respect of expenditure reasonably incurred by the person in connection with the making of a transfer scheme;
  - (l) make provision that has the same or similar effect to the TUPE regulations;
  - (m) make other consequential, supplementary, incidental or transitional provision.
- (4) A transfer scheme may provide –
- (a) for modifications by agreement;
  - (b) for modifications to have effect from the date when the original scheme came into effect.
- (5) A transfer scheme may make provision requiring a transferor to provide such co-operation to a transferee as the transferee may reasonably require in connection with the implementation of the scheme.
- (6) The co-operation that may be required by virtue of subsection (5) includes, in particular, co-operation in relation to –

- (a) the provision of information;
  - (b) consultation with representatives of employees transferred by the scheme.
- (7) Any requirement imposed on a person by a transfer scheme is enforceable by the Secretary of State in civil proceedings –
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (8) Before making a transfer scheme, the Secretary of State must consult –
- (a) the transferor (or, if there is more than one transferor, the transferors), and
  - (b) such other persons as the Secretary of State considers appropriate.
- (9) Subsection (8) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (10) The making of a transfer scheme is not a trigger event for the purposes of the National Security and Investment Act 2021.
- (11) In this section –
- “associate” has the meaning given by section 1152 of the Companies Act 2006;
  - “company” means a company registered under the Companies Act 2006;
  - “Crown body” means any body corporate in which a Minister of the Crown holds, directly or indirectly, any shares or other interest;
  - “designated BNFL body” means a company designated for the purposes of Schedule 7 to the Energy Act 2004 or any body corporate in which a company designated for those purposes holds, directly or indirectly, any shares or other interest;
  - “former GBN body” means –
    - (a) a company formerly designated as Great British Nuclear, or
    - (b) any body corporate in which a company formerly designated as Great British Nuclear –
      - (i) holds, directly or indirectly, any shares or other interest, and
      - (ii) held, directly or indirectly, any shares or other interest, at a time at which it was designated as Great British Nuclear;
  - “GBN body” means Great British Nuclear or any body corporate in which Great British Nuclear holds, directly or indirectly, any shares or other interest;
  - “information” includes documents;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975 (see section 8(1) of that Act);

- “NDA company” means the Nuclear Decommissioning Authority (established by section 1 of the Energy Act 2004) or any body corporate in which the Nuclear Decommissioning Authority holds, directly or indirectly, any shares or other interest;
- “proposed GBN body” means a company that the Secretary of State proposes to designate as Great British Nuclear or any body corporate in which a company proposed to be designated for those purposes holds, directly or indirectly, any shares or other interest;
- “public body” means a body established by an enactment (within the meaning of Part 1 of this Act) or any body corporate in which a body established by an enactment holds, directly or indirectly, any shares or other interest;
- “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
- “UKAEA body” means the United Kingdom Atomic Energy Authority (established by section 1 of the Atomic Energy Authority Act 1954) or any body corporate in which the United Kingdom Atomic Energy Authority holds, directly or indirectly, any shares or other interest.

### **325 Transfer schemes: compensation**

- (1) A scheme under section 324 may provide for a transferor or any person who has suffered loss or damage in consequence of the scheme to be entitled to compensation from the Secretary of State or a transferee under the scheme, in accordance with provision made by or under the scheme.
- (2) Where a person is entitled to compensation, the amount of compensation is to be the amount—
  - (a) agreed by the Secretary of State and the person, or
  - (b) in the absence of such agreement, determined by an independent valuer.
- (3) An independent valuer appointed for the purposes of subsection (2) must be appointed—
  - (a) by the Secretary of State and the person, or
  - (b) in the absence of such agreement, by the Secretary of State on behalf of both the Secretary of State and the person.
- (4) The Secretary of State may by regulations make provision about compensation under this section that corresponds or is similar to any provision about compensation that may be made by the Secretary of State by regulations under paragraph 8(4) of Schedule 9.
- (5) Regulations under this section are subject to the negative procedure.

### **326 Transfer schemes: taxation**

- (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—

- (a) anything transferred under a scheme under section 324, or
  - (b) anything done for the purposes of, or in relation to, a transfer under such a scheme.
- (2) The provision that may be made under subsection (1)(a) includes, in particular, provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision that may be made under subsection (1)(b) includes, in particular, provision for –
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;
  - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) In this section –
- (a) “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax, stamp duty land tax or value added tax;
  - (b) “tax provision” means any provision –
    - (i) about a relevant tax, and
    - (ii) made by an enactment (within the meaning of Part 1 of this Act);
  - (c) references to the transfer of a property include the grant of the lease.
- (5) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the House of Commons.

### **327 Transfer schemes: provision of information or assistance**

- (1) The Secretary of State may direct a person within subsection (2) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require in connection with the making of a scheme under section 324.
- (2) A person is within this subsection if –

- (a) property, rights or liabilities are likely to be transferred from or to the person by such a scheme, or
  - (b) the person is a body corporate that is likely to be transferred under such a scheme.
- (3) Paragraph 12(4), (6), (7) and (8) of Schedule 9 apply to a direction under this section as they apply to a direction under sub-paragraph (1) of that paragraph.
- (4) In this section –
- “assistance” includes assistance provided in a country or territory other than the United Kingdom;
  - “information” includes documents;
  - “specified” means specified in the direction.

### **328 Reimbursement and compensation in connection with designation**

The Secretary of State may reimburse a person in respect of expenditure reasonably incurred by the person in preparation for or in connection with the designation of a company under section 317 (other than any expenditure incurred in connection with the making of a scheme under section 324).

### **329 Pension arrangements in connection with Great British Nuclear**

- (1) The Secretary of State may by regulations make provision about pension arrangements in relation to Great British Nuclear that corresponds or is similar to any provision about pension arrangements in relation to the ISOP that may be made by the Secretary of State by regulations under paragraph 2 or 3 of Schedule 10 (see paragraph 4 of that Schedule for restrictions on how the power to make regulations under paragraph 2 or 3 of that Schedule may be exercised).
- (2) Before making regulations under subsection (1) that make provision corresponding or similar to the provision that may be made by regulations under paragraph 2(1) of Schedule 10, the Secretary of State must carry out a consultation corresponding to the consultation required by paragraph 2(5) of that Schedule.
- (3) Before making regulations under subsection (1) that make provision corresponding or similar to the provision that may be made by regulations under paragraph 3(1) of Schedule 10, the Secretary of State must carry out a consultation corresponding to the consultation required by paragraph 3(4) of that Schedule.
- (4) Subsections (2) and (3) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (5) The Secretary of State may direct a person within subsection (6) to provide the Secretary of State with specified pensions information or such specified assistance as the Secretary of State may reasonably require in preparation for

or in connection with the exercise of the power conferred on the Secretary of State by subsection (1).

- (6) The following persons are within this subsection—
- (a) the trustee of a qualifying pension scheme;
  - (b) any person who exercises functions on behalf of a person within paragraph (a);
  - (c) any person who is or has been an employer of a qualifying member of a qualifying pension scheme.
- (7) Sub-paragraphs (5) to (7) of paragraph 5 of Schedule 10 apply to a direction given under subsection (5) as they apply to a direction given under sub-paragraph (1) of that paragraph.
- (8) The exercise of the power conferred on the Secretary of State by subsection (1) is not a trigger event for the purposes of the National Security and Investment Act 2021.
- (9) In this section—
- “pensions information” means information that—
    - (a) relates to pensions or other benefits under a qualifying pension scheme, or
    - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme;
  - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member (as defined by section 124(1) of the Pensions Act 1995) of the scheme;
  - “qualifying pension scheme” means a pension scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of—
    - (a) a transferor in relation to a transfer scheme under section 324, or
    - (b) an associate (as defined by section 1152 of the Companies Act 2006) of such a transferor;
  - “specified” means specified in the direction.
- (10) Regulations under this section are subject to the negative procedure.

## PART 15

### GENERAL

#### 330 Power to make consequential provision

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate in consequence of or in connection with—
- (a) this Act, other than sections 205 to 208, or
  - (b) any provision made under this Act.



- (2) The power to make regulations under subsection (1) may (among other things) be exercised by amending, repealing or revoking—
  - (a) provision made by or under this Act or by or under primary legislation passed before, or in the same Session as, this Act;
  - (b) retained direct EU legislation.
- (3) In this section, “primary legislation” means—
  - (a) an Act,
  - (b) an Act or Measure of Senedd Cymru,
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation.
- (4) Subject to subsection (5), regulations under subsection (1) are subject to the negative procedure.
- (5) Where regulations under subsection (1) amend or repeal provision made by primary legislation, the regulations are subject to the affirmative procedure.

### **331 Regulations**

- (1) Regulations under this Act made by the Secretary of State, the Treasury or the GEMA are to be made by statutory instrument.
- (2) Regulations under this Act may make—
  - (a) different provision for different purposes or different areas;
  - (b) supplementary, incidental, consequential, transitional or saving provision.
- (3) Where regulations under this Act are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (4) Where regulations under this Act are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Where regulations under this Act are subject to the made affirmative procedure, the statutory instrument containing them must be laid before Parliament after being made.
- (6) Regulations under this Act contained in a statutory instrument laid before Parliament under subsection (5) cease to have effect at the end of the period of 28 days beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.
- (7) In calculating the period of 28 days, no account is to be taken of any whole days that fall within a period during which—
  - (a) Parliament is dissolved or prorogued, or
  - (b) either House of Parliament is adjourned for more than four days.

- (8) If regulations cease to have effect as a result of subsection (6), that does not—
  - (a) affect the validity of anything previously done under the regulations, or
  - (b) prevent the making of new regulations.
- (9) Any provision that may be included in regulations under this Act subject to the negative procedure may be made by regulations subject to the affirmative procedure or the made affirmative procedure.
- (10) Any provision that may be included in regulations under this Act subject to the made affirmative procedure may be made by regulations subject to the affirmative procedure.

### 332 General definitions

In this Act—

- “the affirmative procedure” and “the negative procedure” are to be construed in accordance with section 331(3) and (4) respectively and “the made affirmative procedure” is to be construed in accordance with section 331(5);
- “the GEMA” means the Gas and Electricity Markets Authority.

### 333 Extent

- (1) The following provisions extend to England and Wales, Scotland and Northern Ireland, subject to subsection (5)—
  - (a) Part 1, except Chapter 4;
  - (b) Part 2;
  - (c) Chapter 1 of Part 4;
  - (d) Chapter 3 of Part 4, except sections 155 and 159;
  - (e) section 204;
  - (f) Chapter 1 of Part 8, except sections 223 and 224;
  - (g) Parts 10, 11, 12 and 13;
  - (h) Chapter 1 of Part 14;
  - (i) section 309;
  - (j) Chapter 3 of Part 14;
  - (k) this Part.
- (2) The following provisions extend to England and Wales and Scotland only, subject to subsection (5)—
  - (a) Chapter 4 of Part 1;
  - (b) Part 3;
  - (c) Chapter 2 of Part 4;
  - (d) section 155;
  - (e) section 159;
  - (f) Parts 5 and 6;

- (g) Part 7, except section 204;
  - (h) section 223;
  - (i) Part 9;
  - (j) Chapter 2 of Part 14, except section 309;
  - (k) Chapter 4 of Part 14.
- (3) Chapter 2 of Part 8 extends to England and Wales only, subject to subsection (5).
- (4) Section 224 extends to Scotland only.
- (5) Any amendment, repeal or revocation has the same extent as the provision amended, repealed or revoked, subject to subsection (6).
- (6) Paragraph 4 of Schedule 5 extends to England and Wales, Scotland and Northern Ireland.

### **334 Commencement**

- (1) The provisions of this Act come into force on such day or days as the Secretary of State may by regulations appoint, subject to subsections (2) to (4).
- (2) The following provisions come into force on the day on which this Act is passed –
- (a) in Chapter 1 of Part 2 –
    - (i) section 56;
    - (ii) sections 57 and 58, so far as relating to hydrogen production revenue support contracts and a hydrogen production counterparty;
    - (iii) sections 65 and 66;
    - (iv) section 81(1) to (3), so far as relating to a designation under section 65;
    - (v) section 83, so far as relating to hydrogen production revenue support contracts and a hydrogen production counterparty;
    - (vi) sections 85 and 88, so far as relating to the exercise of any power that comes into force in accordance with this paragraph, and in this paragraph “hydrogen production revenue support contract” and “hydrogen production counterparty” have the same meaning as in that Chapter;
  - (b) section 129;
  - (c) Chapter 1 of Part 4;
  - (d) section 154;
  - (e) section 157;
  - (f) section 158;
  - (g) section 159;
  - (h) in Part 5 –
    - (i) sections 169 and 170;

- 
- (ii) section 174 (including Schedule 9) and section 175 (including Schedule 10);
  - (iii) section 178(2) and (3), so far as relating to other provisions in force by virtue of this paragraph;
  - (iv) sections 180 and 181;
  - (i) section 203 (including Schedule 15);
  - (j) section 204 (including Schedule 16);
  - (k) section 215;
  - (l) Part 8;
  - (m) Part 11, except sections 264 and 265;
  - (n) sections 307, 308 and 309;
  - (o) Chapters 3 and 4 of Part 14;
  - (p) this Part.
- (3) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed –
- (a) Part 1;
  - (b) Chapters 1 to 3, 5 and 6 of Part 2, so far as not already in force by virtue of subsection (2);
  - (c) Part 3;
  - (d) section 153;
  - (e) section 155;
  - (f) section 160;
  - (f) section 202;
  - (g) sections 211 to 214;
  - (h) Part 10;
  - (i) sections 264 and 265;
  - (j) Chapter 1 of Part 13;
  - (k) section 306.
- (4) Section 305 (including Schedule 22) comes into force on the day on which the Convention on Supplementary Compensation for Nuclear Damage comes into force in respect of the United Kingdom.
- (5) The Secretary of State must publish a notice of the date of that day as soon as possible afterwards.
- (6) Regulations under subsection (1) may appoint different days for different purposes or areas.
- (7) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

### 335 Short title

This Act may be cited as the Energy Act 2023.

## SCHEDULES

### SCHEDULE 1

Section 16

#### INTERIM POWER OF SECRETARY OF STATE TO GRANT LICENCES

- 1 (1) Sections 7 to 12 are to have effect with the following modifications until the end of the interim period.
  - (2) In this Schedule “the interim period” means the period beginning when this Schedule comes into force and ending with whatever day the Secretary of State specifies by regulations.
  - (3) Regulations under this paragraph are subject to the negative procedure.
- 2 In section 7 (power to grant licences) –
  - (a) in subsection (1) for “economic regulator” substitute “Secretary of State”;
  - (b) after subsection (2) insert –
    - “(3) As soon as practicable after granting a licence, the Secretary of State must send a copy of the licence to the economic regulator.”
- 3 In section 9 (procedure for licence applications) –
  - (a) in subsection (1), in the words before paragraph (a), for “Secretary of State, or the economic regulator with the approval of the Secretary of State,” substitute “Secretary of State”;
  - (b) in subsection (4), for “economic regulator”, in each place it occurs, substitute “Secretary of State”;
  - (c) for subsection (5) substitute –
    - “(5) A notice under subsection (4) must be given by –
      - (a) sending a copy of the notice to the economic regulator and any appropriate devolved authority, and
      - (b) publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.”
  - (d) after subsection (10) insert –
    - “(10A) For the purposes of subsection (5), the “appropriate devolved authorities” are –
      - (a) the Scottish Ministers, if provision granting the licence in question 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 provision granting the licence in question 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 provision granting the licence in question –
    - (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.”
- 4 In section 12 (standard conditions of licences) –
- (a) in subsection (7)(b) omit “and the Secretary of State”;
  - (b) omit subsection (9).

## SCHEDULE 2

Section 21

## PROCEDURE FOR APPEALS UNDER SECTION 20

*Application for permission to bring appeal*

- 1 (1) An application for permission to bring an appeal may be made –
- (a) only by sending a notice to the CMA requesting the permission, and
  - (b) only by a person entitled under section 20 to bring the appeal if permission is granted.
- (2) Where the economic regulator publishes a decision to modify the conditions of any licence under section 13(8), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published.
- (3) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.
- (4) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.
- (5) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant.

- (6) The appellant must send the economic regulator –
  - (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and
  - (b) such other information as may be required by appeal rules.
- (7) The CMA’s decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (8) Before the authorised member decides whether to grant permission under this paragraph, the economic regulator must be given an opportunity to make representations or observations, in accordance with paragraph 3(2).
- (9) The CMA’s decision on an application for permission must be made –
  - (a) where the economic regulator makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission is received.
- (10) The grant of permission may be made subject to conditions, which may include –
  - (a) conditions which limit the matters that are to be considered on the appeal in question,
  - (b) conditions for the purpose of expediting the determination of the appeal, and
  - (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (11) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons –
  - (a) to the appellant, and
  - (b) to the economic regulator.
- (12) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made.
- (13) Section 25(2) applies to the publication of a decision under sub-paragraph (12) as it does to the publication of a decision under section 25.

#### *Suspension of decision*

- 2 (1) The CMA may direct that, pending the determination of an appeal against a decision of the economic regulator –
  - (a) the decision is not to have effect, or

- (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where—
- (a) an application for its exercise has been made by the appellant at the same time that the appellant made an application (in accordance with paragraph 1) for permission to bring an appeal against a decision of the economic regulator;
  - (b) the economic regulator has been given an opportunity of making representations or observations, in accordance with paragraph 3(2);
  - (c) a person bringing the appeal who falls within section 20(2)(a) or (b) would incur significant costs if the decision were to have effect before the determination of the appeal, and
  - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination.
- (3) The CMA’s decision on an application for a direction under this paragraph must be made—
- (a) where the economic regulator makes representations or observations in accordance with paragraph 3(2) before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received;
  - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received.
- (4) The appellant must send the economic regulator a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (5) The CMA’s decision whether to give a direction is to be taken by an authorised member of the CMA.
- (6) A direction under this paragraph must be—
- (a) given by an authorised member of the CMA, and
  - (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given.
- (7) Section 25(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under section 25.

*Time limit for representations and observations by the economic regulator*

- 3 (1) Sub-paragraph (2) applies where the economic regulator wishes to make representations or observations to the CMA in relation to—
- (a) an application for permission to bring an appeal under paragraph 1;
  - (b) an application for a direction under paragraph 2.



- (2) The economic regulator must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(6) or 2(4) as the case may be.
- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the economic regulator wishes to make representations or observations to the CMA in relation to—
  - (a) the economic regulator’s reasons for the decision in relation to which the appeal is being brought, or
  - (b) any grounds on which that appeal is being brought against that decision.
- (4) The economic regulator must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted.
- (5) The economic regulator must send a copy of the representations and observations it makes under this paragraph to the appellant.

*Determination of matter on appeal*

- 4 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 20 must consist of three members of the CMA panel.
- (2) A decision of the group is effective if, and only if—
  - (a) all the members of the group are present when it is made, and
  - (b) at least two members of the group are in favour of the decision.

*Matters to be considered on appeal*

- 5 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by section 24, may disregard—
  - (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and
  - (b) any or all matters raised by the economic regulator that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2.

*Production of documents*

- 6 (1) For the purposes of this Schedule, the CMA may by notice require—
  - (a) a person to produce to the CMA the documents specified or otherwise identified in the notice;

- (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.
- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply –
  - (a) at the time and place specified in the notice, and
  - (b) in a legible form.
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph.
- (5) A notice for the purposes of this paragraph –
  - (a) may be issued on the CMA’s behalf by an authorised member of the CMA;
  - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

### *Oral hearings*

- 7 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath –
- (a) by a person considering an application for permission to bring an appeal under paragraph 1,
  - (b) by a person considering an application for a direction under paragraph 2, or
  - (c) by a group with the function of determining an appeal;
- and, for that purpose, such a person or group may administer oaths.
- (2) The CMA may by notice require a person –
    - (a) to attend at a time and place specified in the notice, and
    - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1).
  - (3) At any oral hearing the person or group conducting the hearing may require –
    - (a) the appellant, or the economic regulator, if present at the hearing to give evidence or to make representations or observations, or
    - (b) a person attending the hearing as a representative of the appellant or of the economic regulator to make representations or observations.

- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the economic regulator, or the economic regulator's representative is not present at a hearing—
  - (a) there is no requirement to give notice to that person under sub-paragraph (2), and
  - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person's evidence, representations or observations.
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court or Court of Session.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person's place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance.
- (8) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Written statements*

- 8 (1) The CMA may by notice require a person to produce a written statement with respect to a matter specified in the notice to—
  - (a) a person who is considering, or is to consider, an application for a direction under paragraph 2, or
  - (b) a group with the function of determining an appeal.
- (2) The power to require the production of a written statement includes power—
  - (a) to specify the time and place at which it is to be produced, and
  - (b) to require it to be verified by a statement of truth, and a statement required to be so verified must be disregarded unless it is so verified.
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session.
- (4) A notice for the purposes of this paragraph may be issued on the CMA's behalf by an authorised member of the CMA.

#### *Expert advice*

- 9 Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal.

*Defaults in relation to evidence*

- 10 (1) If a person (“the defaulter”)—
- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8,
  - (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular, or
  - (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular,
- an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court or the Court of Session.
- (2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph, and if, after having heard—
- (a) any witness against or on behalf of the defaulter, and
  - (b) any statement in that defaulter’s defence,
- it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court.
- (3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body).
- (4) A person who wilfully alters, suppresses or destroys a document which that person has been required to produce under paragraph 6 is guilty of an offence and is to be liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both);
  - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
  - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
  - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

*Costs or expenses*

- 11 (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs or expenses incurred by the CMA in connection with the appeal.

- (2) An order under sub-paragraph (1) must require those costs or expenses to be paid –
  - (a) where the appeal is allowed in full, by the economic regulator;
  - (b) where the appeal is dismissed in full, by the appellant;
  - (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
- (3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs or expenses reasonably incurred by that other party in connection with the appeal.
- (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of 28 days beginning with the day after the making of the order.
- (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) are to bear interest at such rate as may be determined in accordance with provision contained in the order.
- (6) Any costs or expenses payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made.

#### *Appeal rules*

- 12 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under section 20.
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides, and that provision may, in particular, impose time limits or other restrictions on –
  - (a) the taking of evidence at an oral hearing, or
  - (b) the making of representations or observations at such a hearing.
- (3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate.
- (5) Rules under this paragraph may make different provision for different cases.

#### *Interpretation of Schedule*

- 13 (1) In this Schedule –

“appeal” means an appeal under section 20;

“appeal rules” means rules of procedure under paragraph 12;

“authorised member of the CMA” –

(a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;

(b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means –

(i) any member of the CMA Board who is also a member of the CMA panel, or

(ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;

“CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;

“statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;

“working day” means any day other than –

(a) Saturday or Sunday;

(b) Christmas Day or Good Friday;

(c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971.

(2) References in this Schedule to a party to an appeal are references to –

(a) the appellant, or

(b) the economic regulator.

## SCHEDULE 3

Section 32

### ENFORCEMENT OF OBLIGATIONS OF LICENCE HOLDERS

#### *Orders for securing compliance with certain provisions*

- 1 (1) Where the economic regulator is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, the economic regulator must make an order (a “final order”) containing such provision as appears to the economic regulator to be

necessary for the purpose of securing compliance with that condition or requirement (but this sub-paragraph does not apply if the economic regulator is required by sub-paragraph (2) to make a provisional order in respect of the contravention or likely contravention).

- (2) Where it appears to the economic regulator –
  - (a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) that it is appropriate to make an order under this sub-paragraph, the economic regulator must (instead of taking steps towards the making of a final order) make an order (a “provisional order”) containing such provision as appears to the economic regulator to be necessary for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of sub-paragraph (2)(b) whether it is appropriate to make a provisional order, the economic regulator must have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything that is likely to be done (or omitted to be done) in contravention of the relevant condition or requirement before a final order may be made.
- (4) The economic regulator must confirm a provisional order, with or without modifications, if –
  - (a) the economic regulator is satisfied that the licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) the provision made by the order (with any modifications) is necessary for the purpose of securing compliance with that condition or requirement.
- (5) If a provisional order is not previously confirmed under sub-paragraph (4), it is to cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (6) Sub-paragraphs (1) to (4) are subject to sub-paragraphs (7) to (9) and paragraph 2.
- (7) The economic regulator –
  - (a) must, before making a final order or making or confirming a provisional order, consider whether it would be more appropriate to proceed under the Competition Act 1998 (see section 37);
  - (b) must not make a final order, or make or confirm a provisional order, if the economic regulator considers that it would be more appropriate to proceed under that Act.
- (8) The economic regulator may not make a final order or make or confirm a provisional order if the economic regulator is satisfied that the duties imposed on the economic regulator by section 1 preclude the making or, as the case may be, the confirmation of the order.

- (9) The economic regulator is not required to make a final order or make or confirm a provisional order if it is satisfied –
- (a) that the licence holder has agreed to take and is taking all such steps as appear to the economic regulator to be for the time being appropriate for the purpose of securing or facilitating compliance with the condition or requirement in question, or
  - (b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (10) Where the economic regulator decides that it would be more appropriate to proceed under the Competition Act 1998 or is satisfied as mentioned in sub-paragraphs (8) and (9), the economic regulator must –
- (a) give notice to the licence holder that the economic regulator has so decided or is so satisfied, and
  - (b) publish a copy of the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (11) A final or provisional order –
- (a) must require the licence holder (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified,
  - (b) must take effect at such time as is determined by or under the order, which must be the earliest practicable time, and
  - (c) may be revoked at any time by the economic regulator.
- (12) In this Schedule –
- “final order” means an order under sub-paragraph (1);
  - “provisional order” means an order under sub-paragraph (2);
  - “relevant condition”, in relation to a licence holder, means any condition of any licence (as defined in section 7) held by that person;
  - “relevant requirement”, in relation to a licence holder, means any requirement imposed on the licence holder by or under this Part.

#### *Procedural requirements*

- 2 (1) Before making a final order or confirming a provisional order, the economic regulator must give notice –
- (a) stating that the economic regulator proposes to make or confirm the order and setting out its effect,
  - (b) stating –
    - (i) the relevant condition or requirement,
    - (ii) the acts or omissions which, in the economic regulator’s opinion, constitute or would constitute contraventions of it, and



- (iii) the other facts which, in the economic regulator’s opinion, justify the making or confirmation of the order, and
    - (c) specifying the time (which must not be less than 21 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under sub-paragraph (1) is given—
    - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
    - (b) by sending a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, to the licence holder.
  - (3) The economic regulator must not make a final order with modifications, or confirm a provisional order with modifications, except with the consent of the licence holder or after complying with the requirements of sub-paragraph (4).
  - (4) The requirements are that the economic regulator must—
    - (a) give to the licence holder such notice as the economic regulator considers necessary of the economic regulator’s proposal to make or confirm the order with modifications,
    - (b) specify the time (which must not be less than 21 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made, and
    - (c) consider any representations or objections which are duly made and not withdrawn.
  - (5) Where the economic regulator decides to proceed under the Competition Act 1998 in a case falling within paragraph 1(7)(b), the economic regulator must—
    - (a) inform the licence holder concerned of that decision, and
    - (b) publish the notice in a manner that the economic regulator thinks appropriate for bringing the notice to the attention of persons likely to be affected by the decision.
  - (6) Before revoking a final order or a provisional order which has been confirmed, the economic regulator must give notice—
    - (a) stating that the economic regulator proposes to revoke the order and setting out its effect, and
    - (b) specifying the time (which must not be less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,

and must consider any representations or objections which are duly made and not withdrawn.

- (7) A notice under sub-paragraph (6) is given—
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by sending a copy of the notice to the licence holder.
- (8) As soon as practicable after a final order is made or a provisional order is made or confirmed, the economic regulator must—
  - (a) serve a copy of the order on the licence holder, and
  - (b) publish such a copy in such manner as the economic regulator considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

#### *Validity and effect of orders*

- 3 (1) If the licence holder is aggrieved by a final or provisional order and wishes to question its validity on the ground that the making or confirmation of it was not within the powers of paragraph 1, or that any of the requirements of paragraph 2 have not been complied with in relation to it, the licence holder may within 42 days from the date of service on the licence holder of a copy of the order make an application to the court under this paragraph.
- (2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, may quash the order or any provision of the order.
- (3) Except as provided by this paragraph, the validity of a final or provisional order may not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.
- (5) Where a duty is owed by virtue of sub-paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage is to be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of sub-paragraph (5), it is a defence for the person to prove that they took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of sub-paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order is to be enforceable by civil proceedings by the

economic regulator for an injunction or interdict or for any other appropriate relief.

- (8) In this paragraph “the court” means –
- (a) in relation to England and Wales and Northern Ireland, the High Court;
  - (b) in relation to Scotland, the Court of Session.

#### *Penalties*

- 4 (1) Where the economic regulator is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the economic regulator may, subject to paragraph 6, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) Before imposing a penalty on a licence holder under sub-paragraph (1), the economic regulator must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (3) The economic regulator must not impose a penalty on a licence holder under sub-paragraph (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.
- (4) Before imposing a penalty on a licence holder under sub-paragraph (1) the economic regulator must give notice –
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed,
  - (b) setting out the relevant condition or requirement,
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which, in the opinion of the economic regulator, justify the imposition of a penalty and the amount of the penalty proposed, and
  - (d) specifying the period (which must not be less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under sub-paragraph (4)(a) the economic regulator must give notice –
- (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying the period (which must be at least 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and must consider any representations or objections which are duly made and not withdrawn.

- (6) As soon as practicable after imposing a penalty, the economic regulator must give notice—
  - (a) stating that it has imposed a penalty on the licence holder and its amount,
  - (b) setting out the relevant condition or requirement in question,
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which, in the opinion of the economic regulator, justify the imposition of the penalty and its amount, and
  - (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (7) The licence holder may, within 21 days of the date of service on the licence holder of a notice under sub-paragraph (6), make an application to the economic regulator for it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this paragraph must be given—
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by serving a copy of the notice on the licence holder.
- (9) This paragraph is subject to paragraph 10 (maximum amount of penalty that may be imposed).
- (10) Any sums received by the economic regulator by way of penalty under this paragraph must be paid into the Consolidated Fund.

*Statement of policy with respect to penalties*

- 5 (1) The economic regulator must prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the economic regulator must have regard to its statement of policy most recently published at the time when the contravention occurred.
- (3) The economic regulator may revise its statement of policy and where it does so must publish the revised statement.
- (4) Publication under this paragraph must be in such manner as the economic regulator considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.

- (5) The economic regulator must undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

*Time limits on the imposition of penalties*

- 6 (1) Where no final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention later than the end of the period of five years from the time of the contravention, unless before the end of that period –
  - (a) the notice under paragraph 4(4) relating to the penalty is served on the licence holder under paragraph 4(8), or
  - (b) a notice under section 29(2)(b) is served on the licence holder which specifies that the notice is served in connection with a concern on the part of the economic regulator that the licence holder may be contravening, or may have contravened, a relevant condition or requirement.
- (2) Where a final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention unless the notice relating to the penalty under paragraph 4(4) was served on the licence holder under paragraph 4(8) –
  - (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

*Interest and payment of instalments*

- 7 (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time is to carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under paragraph 4(7) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the economic regulator grants an application under that sub-paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the economic regulator under that sub-paragraph, the economic regulator may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

*Appeals against penalties*

- 8 (1) If the licence holder on whom a penalty is imposed is aggrieved by –
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty, or

- (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,
- the licence holder may make an application to the court under this paragraph.
- (2) An application under sub-paragraph (1) must be made –
- (a) within 42 days from the date of service on the licence holder of a notice under paragraph 4(6), or
  - (b) where the application relates to a decision of the economic regulator on an application by the licence holder under paragraph 4(7), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within sub-paragraph (4), the court –
- (a) may quash the penalty,
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case, or
  - (c) in the case of an application under sub-paragraph (1)(c), may substitute for the date or dates imposed by the economic regulator an alternative date or dates.
- (4) The grounds falling within this sub-paragraph are –
- (a) that the imposition of the penalty was not within the power of the economic regulator under paragraph 4,
  - (b) that any of the requirements of sub-paragraphs (4) to (6) or (8) of paragraph 4 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance, or
  - (c) that it was unreasonable of the economic regulator to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this paragraph in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies, as a date by which the penalty or a portion of the penalty is to be paid, a date before the determination of the application under this paragraph it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this paragraph, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (9) In this paragraph “the court” means –

- (a) in relation to England and Wales or Northern Ireland, the High Court, and
- (b) in relation to Scotland, the Court of Session.

*Recovery of penalties*

- 9 Where a penalty imposed under paragraph 4(1), or any portion of it, has not been paid by the date on which it is required to be paid and—
- (a) no application relating to the penalty has been made under paragraph 8 during the period within which such an application can be made, or
  - (b) an application has been made under that paragraph and determined, the economic regulator may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.

*Maximum amount of penalty*

- 10 (1) The maximum amount of penalty that may be imposed on a licence holder in respect of a contravention may not exceed 10 per cent of the licence holder's turnover.
- (2) The Secretary of State may by regulations provide for how a person's turnover is to be determined for the purposes of this paragraph.
- (3) Regulations under sub-paragraph (2) are subject to the affirmative procedure.
- (4) In this paragraph "penalty" means a penalty imposed on a licence holder under paragraph 4.

SCHEDULE 4

Section 52

TRANSFER SCHEMES

*Application and commencement of scheme*

- 1 (1) A scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways—
- (a) by specifying or describing them in particular;
  - (b) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
  - (c) by specifying the manner in which they are to be determined.
- (2) A scheme comes into force on the date appointed by the scheme.

*Property, rights and liabilities that may be transferred*

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
  - (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
  - (b) property acquired in the period after the making of the scheme and before it comes into force and rights and liabilities arising in that period;
  - (c) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force;
  - (d) property situated in the United Kingdom, otherwise in a controlled place, or elsewhere;
  - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom;
  - (f) rights and liabilities under an enactment or subordinate legislation.
- (2) The transfers to which effect may be given by a scheme include transfers that are to take effect in accordance with the scheme as if there were—
  - (a) no such requirement to obtain a person’s consent or concurrence,
  - (b) no such liability in respect of a contravention of any other requirement, and
  - (c) no such interference with any interest or right,as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates.
- (4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a scheme—
  - (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
  - (b) to treat such an interest or right as modified or terminated.
- (5) That entitlement is to be enforceable in relation to the interest or right—
  - (a) in consequence of what is done or likely to be done by or under this Act, and
  - (b) in corresponding circumstances arising after the transfer,to the extent only that the scheme provides for it to be so enforceable.
- (6) Sub-paragraphs (2) to (5) have effect where shares in a subsidiary of the transferor are or are to be transferred—
  - (a) as if the reference in sub-paragraph (3) to the terms on which the transferor is entitled or subject to anything to which the transfer



relates included a reference to the terms on which the subsidiary is entitled or subject to anything immediately before the transfer takes effect, and

- (b) as if the reference in sub-paragraph (4) to the transferor included a reference to the subsidiary.

*Dividing and modifying transferor's property, rights and liabilities*

- 3 (1) A scheme may contain provision—
  - (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property to be transferred in accordance with the scheme;
  - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor;
  - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor.
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees, or between a transferee and a transferor.
- (3) A scheme may contain provision—
  - (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor, and
  - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them.
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme.
- (5) In sub-paragraph (4) "third party", in relation to a scheme, means a person other than the transferor and the transferee.
- (6) Paragraph 2(2) and (3) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights.

*Obligation to effect transfers etc. under a scheme*

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
  - (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by

- virtue of this paragraph (whether in the same or a different scheme),  
or
- (b) to execute such instruments in favour of any such person,  
as may be specified or described in the scheme.
- (2) An obligation imposed on a person by virtue of sub-paragraph (1) is enforceable by the relevant person in civil proceedings—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (3) The relevant person for the purposes of sub-paragraph (2) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed.

#### *Transfer of licences and permits*

- 5 (1) A scheme may include provision to transfer any licence or permit held by the transferor from the transferor to the transferee.
- (2) Such a transfer may relate to the whole or any part of the licence or permit.
- (3) Where such a transfer relates to a part of the licence or permit, the provision made under sub-paragraph (1) may include—
- (a) provision apportioning responsibility between the transferor and the transferee in relation to—
    - (i) the making of payments required by conditions included in the licence or (as the case may be) permit,
    - (ii) ensuring compliance with any other requirements of the conditions included in the licence or (as the case may be) permit, and
  - (b) provision making incidental modifications to the terms and conditions of the licence or permit.
- (4) References in this paragraph to a part of a licence or permit are references to one or both of—
- (a) a part of the activities authorised by the licence or (as the case may be) permit;
  - (b) a part of the area in relation to which the holder of the licence or (as the case may be) permit is authorised to carry on those activities.

#### *Powers and duties under statutory provisions*

- 6 (1) A scheme may contain provision for some or all of the powers and duties to which this paragraph applies—
- (a) to be transferred to the transferee,
  - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or

- (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee.
- (2) Provision falling within sub-paragraph (1) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the transferor by or under an enactment, so far as those powers and duties are connected with—
  - (a) the undertaking of the transferor to the extent the scheme relates to that undertaking, or
  - (b) any property, rights or liabilities to be transferred in accordance with the scheme.
- (4) The powers and duties mentioned in sub-paragraph (3) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.

#### *Effect of scheme*

- 7 (1) Where a scheme provides for the transfer of property, rights or liabilities, or for the creation of interests, rights or liabilities—
- (a) this Act has the effect that, at the time when the scheme comes into force, the property or interests, rights or liabilities vest, without further assurance, in the transferee, and
  - (b) the provisions of that scheme in relation to that property or those interests, rights or liabilities have effect from that time.
- (2) Sub-paragraph (1) is subject to so much of a scheme as provides for—
- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
  - (b) the creation of interests, rights and liabilities which are to be created in accordance with the scheme,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission of the words “without further assurance”.

#### *Supplementary provisions of schemes*

- 8 (1) A scheme may—
- (a) make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme;
  - (b) make different provision for different purposes.
- (2) In particular, a scheme may make provision, in relation to transfers in accordance with the scheme—

- (a) for the transferee to be treated as the same person in law as the transferor;
  - (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
  - (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme;
  - (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the transferor is not to terminate any of those contracts but is to be that periods of employment with the transferor are to count for all purposes as periods of employment with the transferee;
  - (e) for proceedings commenced by or against the transferor to be continued by or against the transferee.
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) A scheme may make provision for disputes as to the effect of the scheme between the transferor and the transferee to be referred to such arbitration as may be specified in or determined under the scheme.
- (5) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property –
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and
  - (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention.
- (6) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsection (1) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer –
- (a) as if the transfer had been effected by deed, and
  - (b) as if the words “unless specially qualified” were omitted from that subsection.

- (7) In this paragraph references to a transfer in accordance with a scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

*Modification of scheme*

- 9 (1) The Secretary of State may modify a scheme.
- (2) A modification may be made only for the purpose of achieving the objective with which the scheme was made (see section 50(2)).
- (3) If a transfer under the scheme has taken effect, a modification under sub-paragraph (1) may be made only with the agreement of—
- (a) the transferor or transferee affected by the modification (or, where both the transferor and transferee are affected, with the agreement of both of them);
  - (b) any employee who is a party to a contract of employment containing rights and liabilities to which the modification relates;
  - (c) any other person whose property or rights have been adversely affected by the modification.
- (4) 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).

*Compensation for third parties*

- 10 (1) Where—
- (a) an entitlement of a third party to an interest or right would, apart from a provision of a scheme under paragraph 2(4) and (5), become enforceable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities,
  - (b) the provisions of that scheme or of paragraph 2(4) and (5) have the effect of preventing the third party's entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and
  - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides,
- the third party is entitled to compensation in respect of the extinguishment of the third party's entitlement.
- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement.

- (3) A liability to pay compensation under this paragraph falls on the Secretary of State.
- (4) In the preceding provisions of this paragraph “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
- (5) This paragraph has effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme as it has effect in relation to the scheme.

*Provision relating to foreign property etc*

- 11 (1) Where there is a transfer in accordance with a scheme of—
  - (a) any foreign property, or
  - (b) a foreign right or liability,the transferor and the transferee must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee is effective under the relevant foreign law.
- (2) Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must—
  - (a) hold the property or right for the benefit of the transferee, or
  - (b) discharge the liability on behalf of the transferor.
- (3) The transferor must comply with any directions given to it by the transferee in relation to the performance of the obligations under sub-paragraphs (1) and (2) of the transferor.
- (4) Nothing in sub-paragraphs (1) to (3) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a scheme.
- (5) Where—
  - (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a person, and
  - (b) by virtue of this paragraph, the person holds the other property or right for the benefit of the transferee or is required to discharge the liability on behalf of the transferee,the property, right or liability acquired or incurred immediately becomes the property, right or liability of the transferee.
- (6) The provisions of sub-paragraphs (1) to (5) have effect in relation to foreign property, rights or liabilities transferred to the transferee under sub-paragraph (5) as they have effect in the case of property, rights and liabilities transferred in accordance with a scheme.
- (7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance

with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

- (8) Expenses incurred under this paragraph by a person as the person from which anything is transferred are to be met by the transferee.
- (9) An obligation imposed under this paragraph in relation to property, rights or liabilities is to be enforceable as if contained in a contract between the transferor and the transferee.

*Provision of information to Secretary of State*

- 12 (1) If the Secretary of State proposes to make a scheme, the Secretary of State may direct—
- (a) a proposed transferor, or
  - (b) a proposed transferee,
- to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to make the scheme.
- (2) If the Secretary of State proposes to modify a scheme, the Secretary of State may direct—
- (a) a transferor, or
  - (b) a transferee,
- to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to modify the scheme.
- (3) A direction under sub-paragraph (1) or (2) must specify the period within which the information is to be provided.
- (4) The period specified in the direction must be not less than 28 days beginning with the day of the giving of the direction.
- (5) If a person fails to comply with such a direction, the Secretary of State may serve a notice on the person requiring the person—
- (a) to produce to the Secretary of State any documents which are specified or described in the notice and are in the person's custody or under the person's control, or
  - (b) to provide to the Secretary of State such information as may be specified or described in the notice.
- (6) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice.
- (7) No person may be required under this paragraph—
- (a) to produce a document which the person could not be compelled to produce in civil proceedings in the court, or
  - (b) to provide information which the person could not be compelled to give in evidence in such proceedings.

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- (8) A person who intentionally alters, suppresses or destroys a document which the person has been required to produce by a notice under sub-paragraph (5) is guilty of an offence and liable –
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
  - (b) on conviction on indictment, to a fine.
- (9) If a person fails to comply with a notice under sub-paragraph (5), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (10) Any order under sub-paragraph (9) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of the following –
- (a) the person in default;
  - (b) any officers of a company or other association who are responsible for its default.
- (11) In this paragraph –
- (a) a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form, and
  - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form.
- (12) In this paragraph “the court” means –
- (a) in England and Wales, the High Court;
  - (b) in Scotland, the Court of Session;
  - (c) in Northern Ireland, the High Court.

### *Interpretation*

- 13 (1) In this Schedule –
- “controlled place” has the meaning given by section 17(3) to (4) of the Energy Act 2008;
  - “scheme” means a scheme under section 50;
  - “subsidiary” has the meaning given to it by section 1159 of the Companies Act 2006;
  - “transferee” –
    - (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and
    - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created;



“transferor” –

- (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme; and
  - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created.
- (2) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable.

## SCHEDULE 5

Section 54

### AMENDMENTS RELATED TO PART 1

#### *Utilities Act 2000*

- 1 The Utilities Act 2000 is amended as follows.
- 2 In section 4 (forward work programmes), at the end insert –
  - “(7) In this section –
    - (a) references to functions do not include functions under Part 1 of the Energy Act 2023, and
    - (b) references to projects do not include projects with regard to the exercise of such functions.”
- 3 In section 5 (annual and other reports of Authority), after subsection (10) insert –
  - “(11) In this section –
    - (a) references to functions of the Authority do not include functions under Part 1 of the Energy Act 2023;
    - (b) references to activities of the Authority do not include activities in the exercise of such functions;
    - (c) the reference in subsection (1) to “references made by the Authority” does not include references made by virtue of section 36(1) of the Energy Act 2023.”
- 4 In section 5XA (laying of accounts before Scottish Parliament and Welsh Assembly) –
  - (a) in the heading, for “and Welsh Assembly” substitute “, Senedd Cymru or the Northern Ireland Assembly”;

- (b) after subsection (2) insert—
  - “(2A) The Authority must send to the Department for the Economy in Northern Ireland, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 31 January of the financial year following that to which the accounts relate.”;
- (c) after subsection (3A) insert—
  - “(3B) The Department for the Economy in Northern Ireland must lay a copy of whatever is sent to it under subsection (2A) before the Northern Ireland Assembly.”;
- (d) for subsection (4) substitute—
  - “(4) In subsections (1) to (3) “certified accounts and report” means those accounts certified under sections 5 and 7 of the Government Resources and Accounts Act 2000, and the report issued by the Comptroller and Auditor General under section 6(3)(a) of that Act.”

- 5 In section 105 (general restrictions on disclosure of information)—
- (a) in subsection (1)(a), after “Energy Prices Act 2022” insert “or Part 1 of the Energy Act 2023”;
  - (b) in subsection (3), after paragraph (azc) insert—
    - “(azd) it is made for the purpose of facilitating the performance of any functions of the Authority under or by virtue of Part 1 of the Energy Act 2023;”;
  - (c) in subsection (6), at the end insert—
    - “(z1) Part 1 of the Energy Act 2023.”

### *Enterprise Act 2002*

- 6 The Enterprise Act 2002 is amended as follows.
- 7 In section 136 (investigations and reports on market investigation references), in subsection (7)(b), for the words from “or” to the end substitute “, section 43 of the Electricity Act 1989 or (as the case may be) section 36 of the Energy Act 2023;”.
- 8 (1) Section 168 (regulated markets) is amended as follows.
- (2) In subsection (3) (meaning of “relevant action”)—
    - (a) omit “or” at the end of paragraph (p);
    - (b) after paragraph (q) insert “; or
    - (r) modifying the conditions of a licence granted under section 7 of the Energy Act 2023.”
  - (3) In subsection (4) (meaning of “relevant statutory functions”)—
    - (a) omit “and” at the end of paragraph (r);

- (b) after paragraph (s) insert “, and
  - (t) in relation to a licence granted under section 7 of the Energy Act 2023, the objectives and duties of the Gas and Electricity Markets Authority under section 1 of that Act.”
- (4) In subsection (6) –
  - (a) for “or section 6” substitute “, section 6”;
  - (b) before “would” insert “or section 7 of the Energy Act 2023”.

*Enterprise and Regulatory Reform Act 2013*

- 9 In Schedule 4 to the Enterprise and Regulatory Reform Act 2013, in paragraph 35(3) (membership of CMA panel), in the definition of “specialist utility functions”, after paragraph (b) insert –
- “(ba) an appeal under section 20 of the Energy Act 2023;”.

SCHEDULE 6

Section 103

CARBON DIOXIDE STORAGE LICENCES: LICENCE PROVISIONS

In the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221), in Schedule 1 (provisions to be included in a licence), after paragraph 5 insert –

**“6 Change in control of licence holder**

- (1) This paragraph applies if –
  - (a) the licence holder is a company, or
  - (b) where two or more persons are joint licence holders, any of those persons is a company,and references in this paragraph to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the authority.
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the authority for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The authority may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.

- (6) If the authority proposes to grant consent subject to any condition or to refuse consent, the authority must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the authority must decide an application within three months of receiving it, but the authority may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in sub-paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by the licence, and
  - (c) financial conditions.
- (9) The authority’s decision on the application, and any conditions as mentioned in sub-paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this paragraph “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company is a joint licence holder with another person or other persons, that other person or those other persons.
- (11) For the purposes of this paragraph, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, but read as if –
  - (a) for the words “the greater part” wherever they occur in section 450(3), there were substituted “one-third or more”,
  - (b) in section 451(4) and (5), for “may” there were substituted “must”, and
  - (c) in section 451(4) and (5), any reference to an associate of a person included only –
    - (i) a relative (as defined in section 448(2) of that Act) of the person,
    - (ii) a partner of the person, and
    - (iii) a trustee of a settlement (as defined in section 620 of the Income Tax (Trading and Other Income) Act 2005) of which the person is a beneficiary.

## **7 Revocation of licence re change in control**

- (1) This paragraph applies in connection with a change in control of a licence holder which is a company (see paragraph 6).

- (2) In the event of—
- (a) any breach or non-observance by the company of any of the terms of paragraph 6,
  - (b) any breach of a condition (imposed in accordance with paragraph 6) subject to which the authority gave its consent to a change in control of the company, or
  - (c) any failure to provide full and accurate information in response to a notice given by the authority to the company under section 29A,
- the authority may, by giving the company and any joint licence holders notice in writing, revoke the licence with effect from the date specified in the notice.

## 8 Partial revocation of licence re change in control

- (1) This paragraph applies if two or more persons are joint licence holders and any of them is a company.
- (2) If an event mentioned in paragraph 7(2)(a), (b) or (c) occurs in connection with a change in control of the company, the authority may exercise the power in paragraph 7 to revoke the licence in so far as it applies to that company (without revoking it in so far as it applies to the other person or persons who are joint licence holders)."

## SCHEDULE 7

Section 113

### PERMITTED DISCLOSURES OF MATERIAL OBTAINED BY OGA

#### *Disclosure by OGA to specified persons*

- 1 (1) Section 113 does not prohibit a disclosure of protected material by the OGA which—
  - (a) is made to a person mentioned in column 1 of the table below,
  - (b) is made for the purpose of facilitating the carrying out of that person's functions, and
  - (c) is a disclosure of protected material obtained by the OGA under a provision mentioned in the corresponding entry of column 2 of the table.

<i>Column 1</i>	<i>Column 2</i>
A Minister of the Crown	Section 112 or 124
His Majesty's Revenue and Customs	Section 112 or 124
The Competition and Markets Authority	Section 112 or 124

<i>Column 1</i>	<i>Column 2</i>
The Scottish Ministers	Section 112
The Welsh Ministers	Section 112
A Northern Ireland Department	Section 112
The Office for Budget Responsibility	Section 112
An enforcing authority	Section 112 or 124
The Statistics Board	Section 112 or 124
The GEMA	Section 112 or 124
The Crown Estate	Section 112
A manager of the Crown Estate in Scotland	Section 112

- (2) In the table –
- “enforcing authority” has the same meaning as in Part 1 of the Health and Safety at Work etc Act 1974 (see section 18(7)(a) of that Act);
  - “manager of the Crown Estate in Scotland” means a person who for the time being is discharging functions in relation to the management of any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies;
  - “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975.
- (3) Section 113 does not prohibit a disclosure of protected material by the OGA which –
- (a) is a disclosure of protected material obtained by it under section 112,
  - (b) is made to the Natural Environment Research Council, or any other similar body carrying on geological activities, and
  - (c) is made for the purpose of enabling the body to prepare and publish reports and surveys of a general nature using information derived from the protected material.
- (4) A person to whom protected material is disclosed by virtue of sub-paragraph (1) or (3) may use the protected material only for the purpose mentioned in sub-paragraph (1)(b) or (3)(c) (as the case may be).
- (5) Section 113 does not prohibit a person mentioned in sub-paragraph (4) from disclosing the protected material so far as necessary for the purpose mentioned in that sub-paragraph.

- (6) The Secretary of State may by regulations amend the table in sub-paragraph (1) –
  - (a) to remove a person from column 1,
  - (b) to add to column 1 a person to whom sub-paragraph (7) applies, or
  - (c) to add, remove or change entries in column 2.
- (7) This sub-paragraph applies to –
  - (a) persons holding office under the Crown;
  - (b) persons in the service or employment of the Crown;
  - (c) persons acting on behalf of the Crown;
  - (d) government departments;
  - (e) publicly owned companies as defined in section 6 of the Freedom of Information Act 2000.
- (8) Regulations under sub-paragraph (6) are subject to the affirmative procedure.

*Disclosure required for returns and reports prepared by OGA*

- 2 (1) Section 113 does not prohibit the OGA from using protected material obtained by the OGA under section 112 for the purpose of –
  - (a) preparing such returns and reports as may be required under obligations imposed by or under any Act;
  - (b) preparing and publishing reports and surveys of a general nature using information derived from the protected material.
- (2) Section 113 does not prohibit the OGA from disclosing protected material so far as necessary for those purposes.

*Disclosure in exercise of certain OGA powers*

- 3 Section 113 does not prohibit a disclosure of protected material if it is made in the exercise of the OGA's powers under section 121 (publication of details of sanctions).

*Disclosure after specified period*

- 4 (1) Section 113 does not prohibit protected material obtained by the OGA under section 112 from being –
  - (a) published, or
  - (b) made available to the public (where the protected material includes samples),by the OGA or a subsequent holder at such time as may be specified in regulations made by the Secretary of State.
- (2) Regulations under sub-paragraph (1) may include provision permitting protected material to be published, or made available to the public, immediately after it is provided to a person.

- (3) Before making regulations under sub-paragraph (1), the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) Sub-paragraph (3) does not apply if the Secretary of State is satisfied that consultation is unnecessary having regard to consultation carried out by the OGA in relation to what time should be specified in regulations under sub-paragraph (1).
- (5) Regulations under sub-paragraph (1) are subject to the affirmative procedure.
- (6) In determining the time to be specified in respect of protected material in regulations under sub-paragraph (1), the Secretary of State must have regard to the following factors –
  - (a) whether the specified time will allow owners of protected material a reasonable period of time to satisfy the main purpose for which they acquired or created the material;
  - (b) any potential benefits to the carbon storage industry of protected material being published or made available at the specified time;
  - (c) any potential risk that the specified time may discourage persons from acquiring or creating carbon storage information or carbon storage samples;
  - (d) any other factors the Secretary of State considers relevant.
- (7) In balancing the factors mentioned in sub-paragraph (6)(a) to (d), the Secretary of State must take into account the principal objectives of the Secretary of State set out in section 1(1).
- (8) For the purposes of sub-paragraph (6)(a), the owner of protected material is the person by whom, or on whose behalf, the protected material was provided to the OGA under section 112.

*Disclosure with appropriate consent*

- 5 (1) Section 113 does not prohibit a disclosure of protected material if it is made with the appropriate consent.
- (2) For this purpose a disclosure is made with the appropriate consent if –
  - (a) in the case of disclosure by the OGA, the original owner consents to the disclosure;
  - (b) in the case of disclosure by a subsequent holder –
    - (i) the OGA consents to the disclosure, and
    - (ii) where the protected material in question was provided to the OGA under section 112, the OGA confirms that the original owner of the material also consents to the disclosure.
- (3) For the purposes of sub-paragraph (2), the original owner of protected material provided to the OGA is the person by whom, or on whose behalf, the protected material was so provided.



*Disclosure required by legislation*

- 6 Section 113 does not prohibit a disclosure of protected material required by virtue of an obligation imposed by or under this or any other Act.

*Disclosure for purpose of proceedings*

- 7 (1) Section 113 does not prohibit a disclosure of protected material by the OGA for the purposes of, or in connection with—
- (a) civil proceedings, or
  - (b) arbitration proceedings.
- (2) Section 113 does not prohibit a disclosure of protected material by the OGA for the purposes of, or in connection with—
- (a) the investigation or prosecution of criminal offences, or
  - (b) the prevention of criminal activity.

SCHEDULE 8

Section 125

CARBON STORAGE INFORMATION AND SAMPLES: APPEALS

**PART 1**

APPEALS AGAINST DECISIONS RELATING TO INFORMATION AND SAMPLES

*Appeals in relation to information and samples plans*

- 1 (1) A person affected by any decision of the OGA to which effect is given by the preparation of an information and samples plan may appeal against it to the Tribunal—
- (a) on the ground that the decision was not within the powers of the OGA, or
  - (b) on the ground that the plan is unreasonable.
- (2) On an appeal under this paragraph the Tribunal may—
- (a) affirm, vary or quash the decision under appeal,
  - (b) remit the decision under appeal to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate, or
  - (c) substitute its own decision for the decision under appeal.

*Appeals against notices requiring provision of information or samples*

- 2 (1) A person affected by any decision of the OGA to which effect is given by the giving of a notice requiring the provision of information or samples under section 112 may appeal against it to the Tribunal—

- (a) on the ground that the decision was not within the powers of the OGA, or
  - (b) on the ground that the length of time given to comply with the notice is unreasonable.
- (2) On an appeal under this paragraph the Tribunal may –
- (a) affirm, vary or quash the decision under appeal,
  - (b) remit the decision under appeal to the OGA for reconsideration with such directions (if any) as the Tribunal considers appropriate, or
  - (c) substitute its own decision for the decision under appeal.

## PART 2

### APPEALS RELATING TO ENFORCEMENT OF SANCTIONABLE REQUIREMENTS

#### *Appeals in relation to sanction notices*

- 3 (1) Where a sanction notice is given under section 115 in respect of a failure to comply with a sanctionable requirement, an appeal may be made –
- (a) under paragraph 4 (on the ground that there was no such failure to comply);
  - (b) under paragraph 5 (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.

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

- 4 (1) An appeal may be made to the Tribunal by the person, or by any of the persons, to whom a sanction notice is given in respect of a failure to comply with a sanctionable requirement, on the grounds that the person, or persons, did not fail to comply with the requirement.
- (2) On an appeal under this paragraph, the Tribunal may confirm or cancel the sanction notice.
- (3) Where sanction notices are given on more than one occasion in respect of the same failure to comply with a sanctionable requirement –
- (a) an appeal under this paragraph 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 paragraph 5.

*Appeals against sanction imposed*

- 5 (1) Where a sanction notice is given in respect of a failure to comply with a sanctionable requirement, a person mentioned in sub-paragraph (2) may appeal to the Tribunal against any of the decisions of the OGA mentioned in sub-paragraph (3) (as to the sanction imposed by the notice) on the grounds mentioned in sub-paragraph (4).
- (2) The persons who may appeal are –
- (a) the person, or any of the persons, to whom the notice was given, and
  - (b) in the case of an operator removal notice under section 119, the licensee under whose carbon storage licence the exploration operator operates.
- (3) The decisions against which an appeal may be made are –
- (a) 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 sanctionable requirement, or
    - (ii) the period for compliance with the sanctionable requirement;
  - (b) 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) where a revocation notice has been given, the decision to terminate the carbon storage licence or to revoke the storage permit;
  - (d) where an operator removal notice has been given, the decision to require the removal of the exploration operator.
- (4) The grounds on which an appeal may be made 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 paragraph 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 mentioned in sub-paragraph (3)(a)(i) (remedial action), or
  - (b) confirm or vary the decision, in the case of a decision mentioned in sub-paragraph (3)(a)(ii) (period for compliance),
- and confirm, vary or cancel the enforcement notice accordingly.
- (6) On an appeal under this paragraph 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 mentioned in sub-paragraph (3)(b)(i) (imposition of penalty), or
  - (b) confirm or vary the decision, in the case of a decision mentioned in sub-paragraph (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 117(6)(a) when deciding whether to confirm or vary a decision as to the amount of a financial penalty under sub-paragraph (6)(b).
  - (8) On an appeal under this paragraph against a decision to terminate a carbon storage licence, to revoke a storage permit or to require the removal of an exploration operator the Tribunal may –
    - (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 sub-paragraph (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.

*Appeals against information requirements*

- 6 (1) A person to whom a notice is given under section 124 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 paragraph 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.

SCHEDULE 9

Section 174

INDEPENDENT SYSTEM OPERATOR AND PLANNER: TRANSFERS

**PART 1**

TRANSFER SCHEMES

*Power to make a transfer scheme*

- 1 (1) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person –

- (a) in preparation for or in connection with the designation of a person under section 162(1), or
  - (b) for the purpose of enabling the ISOP to carry out any of its functions.
- (2) The Secretary of State may, during the period of 7 years beginning with the day on which this Act is passed, make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person in connection with the operation or management of—
  - (a) a document maintained in accordance with the conditions of a relevant licence, or
  - (b) an agreement that gives effect to a document so maintained.
- (3) In this Schedule
  - (a) “transfer scheme” means a scheme under either or both of sub-paragraphs (1) and (2);
  - (b) “transferor”, in relation to a transfer scheme, means a person from whom property, rights or liabilities are or are to be transferred under the scheme;
  - (c) “transferee”, in relation to a transfer scheme, means a person to whom property, rights or liabilities are or are to be transferred under the scheme.
- (4) In this Part of this Schedule—
  - (a) “designated”, in relation to a transfer scheme, means specified in or determined in accordance with the scheme;
  - (b) “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246);
  - (c) references to property are to property situated in the United Kingdom or elsewhere;
  - (d) references to the transfer of property include the grant of a lease;
  - (e) references to rights and liabilities—
    - (i) are references to rights and liabilities of any kind, arising (in any way or at any time) under the law of a part of Great Britain or of a place outside Great Britain;
    - (ii) include rights and liabilities arising under or by virtue of an enactment.

### *Consultation*

- 2 (1) Before making a transfer scheme, the Secretary of State must consult—
  - (a) the transferor (or, if there is more than one transferor, the transferors), and
  - (b) such other persons as the Secretary of State considers appropriate.
- (2) Sub-paragraph (1) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

*Transfer of property, rights and liabilities*

- 3 (1) The transfer of designated property, rights and liabilities under a transfer scheme takes effect on the date (or dates) specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1) has effect notwithstanding any provision (whether under an enactment or agreement or otherwise) that would otherwise prevent or restrict the transfer.
- (3) The things that may be transferred under a transfer scheme include—
  - (a) rights, powers, duties and liabilities under or in connection with a contract of employment (see paragraph 4);
  - (b) property, rights and liabilities that could not otherwise be transferred;
  - (c) property acquired, and rights and liabilities arising, after the making of the scheme;
  - (d) criminal liabilities.
- 4 (1) This paragraph applies where, under a transfer scheme, an employee to whom the scheme applies becomes an employee of a transferee.
- (2) The transfer scheme may apply to—
  - (a) all persons who are employees of a transferor,
  - (b) such descriptions of a transferor's employees as the scheme may specify, or
  - (c) such employees of a transferor as the scheme may specify.
- (3) The transfer scheme may include provision—
  - (a) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply to any extent in relation to the transfer);
  - (b) about the pension entitlements of the employee enjoyed immediately before the transfer.
- (4) The transfer scheme must contain provision enabling an employee to whom the scheme applies to object to the transfer before the relevant time, including provision as to how such an objection is to be made and as to the consequences of it.
- (5) The transfer scheme may provide that a person who is assigned to work for a transferor (whether on secondment or otherwise and whether or not on a full-time basis), but who does not have a contract of employment with the transferor, is to be treated for the purposes of any provision of the scheme as an employee of the transferor.
- (6) The transfer scheme may provide that a collective agreement that, immediately before the relevant time, had effect in relation to an employee's employment with a transferor is to have effect on and after the relevant time in relation to the employee's employment with a transferee.

- (7) In this paragraph—
- “collective agreement” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178(1) of that Act);
  - “employee” has the same meaning as in the TUPE regulations (see regulation 2(1) of the regulations);
  - “the relevant time” means the time at which the transfer of the person’s employment takes effect in accordance with the transfer scheme.
- 5 (1) A transfer scheme may make provision requiring a transferor to provide such co-operation to a transferee as the transferee may reasonably require in connection with the implementation of the scheme.
- (2) The co-operation that may be required by virtue of sub-paragraph (1) includes, in particular, co-operation in relation to—
- (a) the provision of information;
  - (b) consultation with representatives of employees transferred by the scheme.
- 6 (1) A transfer scheme may make supplementary, incidental, transitional or consequential provision and may in particular—
- (a) create rights, or impose liabilities, in relation to property, rights or liabilities transferred;
  - (b) make provision about the continuing effect of things done by a transferor in respect of anything transferred;
  - (c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to, a transferor in respect of anything transferred;
  - (d) make provision for references to a transferor in any instrument or other document in respect of anything transferred to be treated as references to the transferee;
  - (e) prevent 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;
  - (f) dispense with any formality in relation to the transfer of anything by the scheme;
  - (g) make provision for the shared ownership or use of property;
  - (h) require a transferor, an associate of a transferor, or a transferee, to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(d) does not apply to references in—
- (a) primary legislation,
  - (b) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
  - (c) an instrument made under an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation.

- (3) Any requirement imposed on a person by a transfer scheme is enforceable by the Secretary of State in civil proceedings –
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (4) A certificate issued by the Secretary of State to the effect that any property, interest, right or liability transferred in accordance with a transfer scheme to a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.
- (5) In this paragraph –
- “associate” has the meaning given by section 1152 of the Companies Act 2006;
- “primary legislation” means –
- (a) an Act,
  - (b) an Act of the Scottish Parliament,
  - (c) an Act or Measure of Senedd Cymru, or
  - (d) Northern Ireland legislation.
- 7 A transfer scheme may –
- (a) make different provision for different purposes;
  - (b) make provision subject to exceptions.

### *Compensation*

- 8 (1) A transfer scheme may provide for a transferor to be entitled to compensation from the Secretary of State, in accordance with provision made by or under the scheme, to the extent that the scheme makes provision –
- (a) in preparation for or in connection with the first designation of a person under section 162(1), or
  - (b) for the purpose of facilitating the carrying on by the ISOP of any of its functions.
- (2) Where a transferor is entitled to compensation by virtue of sub-paragraph (1), the amount of compensation is to be the amount –
- (a) agreed by the Secretary of State and the transferor, or
  - (b) in the absence of such agreement, determined by an independent valuer.
- (3) For the purposes of sub-paragraph (2) an independent valuer must be appointed –
- (a) by the Secretary of State and the transferor, or
  - (b) in the absence of such agreement, by the Secretary of State on behalf of both the Secretary of State and the transferor.
- (4) The Secretary of State may by regulations make provision –



- (a) for determining when there is an absence of agreement for the purposes of sub-paragraph (2)(b) or (3)(b);
  - (b) about the procedure to be followed by an independent valuer in making a determination for the purposes of sub-paragraph (2)(b) (“a compensation determination”);
  - (c) specifying matters to which an independent valuer must have regard, or assumptions that an independent valuer must apply, in making a compensation determination;
  - (d) for an independent valuer to require the Secretary of State or the transferor to provide such information to the independent valuer as the independent valuer reasonably requires for the purposes of making a compensation determination;
  - (e) for an independent valuer’s determination to be binding on the Secretary of State and the transferor for the period specified in or determined under the regulations;
  - (f) about remuneration and expenses of an independent valuer;
  - (g) about enforcement of requirements imposed by the regulations.
- (5) Regulations under sub-paragraph (4) may confer a discretion on a person.

#### *Taxation*

- 9 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to—
- (a) anything transferred, acquired or disposed of under a transfer scheme, or
  - (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme.
- (2) The provision that may be made under sub-paragraph (1)(a) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
  - (b) anything transferred to be treated in a specified way for the purposes of a tax provision;
  - (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision that may be made under sub-paragraph (1)(b) includes, in particular, provision for—
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;
  - (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way;

- (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer.
- (4) A statutory instrument containing regulations under this paragraph is subject to annulment in pursuance of a resolution of the House of Commons.
- (5) In this paragraph—
  - “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax, stamp duty land tax or value added tax;
  - “tax provision” means any provision—
    - (a) about a relevant tax, and
    - (b) made by an enactment.

*Power to amend transfer scheme*

- 10 (1) The Secretary of State may amend a transfer scheme if the Secretary of State considers that the amendment is appropriate—
  - (a) in preparation for or in connection with the designation of a person under section 162(1),
  - (b) for the purpose of enabling the ISOP to carry out any of its functions, or
  - (c) for the purpose of enabling a transferor to carry out any of its functions.
- (2) The power under sub-paragraph (1) is not exercisable in relation to a transfer scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect.
- (3) Paragraphs 2 to 7 apply in relation to the amendment of a transfer scheme as they apply in relation to a transfer scheme.
- (4) A transfer scheme may provide for a transferor or transferee under the scheme to be entitled to compensation in consequence of the amendment of the scheme.
- (5) Paragraph 8(2) to (5) applies (with any necessary modifications) in relation to an entitlement to compensation under sub-paragraph (4) as it applies in relation to an entitlement to compensation under paragraph 8(1).

*National Security and Investment Act 2021*

- 11 The making of a transfer scheme is not a trigger event for the purposes of the National Security and Investment Act 2021.

## PART 2

### OTHER PROVISION ABOUT TRANSFERS AND DESIGNATION

#### *Provision of information or assistance*

- 12 (1) The Secretary of State may direct a person within sub-paragraph (2) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require –
  - (a) in preparation for or in connection with the designation of a person under section 162(1), or
  - (b) in connection with the making of a transfer scheme.
- (2) A person is within this sub-paragraph if –
  - (a) property, rights or liabilities are likely to be transferred from or to the person by a transfer scheme, or
  - (b) the person is a body corporate that is likely to be transferred under a transfer scheme.
- (3) The Secretary of State may direct a person (other than a person within sub-paragraph (2)) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require in preparation for or in connection with the designation of a person under section 162(1).
- (4) A direction under sub-paragraph (1) or (3) must –
  - (a) be in writing, and
  - (b) specify the sub-paragraph under which it is given.
- (5) The power to give a direction under sub-paragraph (3) ceases to be exercisable –
  - (a) at the end of the period of 3 years beginning with the time from which the first designation under section 162(1) has effect, or
  - (b) if at any time before the end of that period a transfer scheme is made under paragraph 1(1), at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect.
- (6) A person to whom a direction is given under sub-paragraph (1) or (3) must, so far as reasonably practicable, provide the Secretary of State with the specified information or assistance –
  - (a) within the specified period, and
  - (b) in the specified form and manner.
- (7) A direction under sub-paragraph (1) or (3) is enforceable by the Secretary of State in civil proceedings –
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

- (c) for any other appropriate remedy or relief.
- (8) The Secretary of State –
  - (a) must reimburse a person in respect of costs reasonably incurred by the person in complying with a direction under sub-paragraph (1) or (3);
  - (b) may reimburse a person in respect of costs reasonably incurred by the person in complying with a request (whether made before or after the day on which this Act is passed) to provide the Secretary of State with information reasonably required by the Secretary of State for a purpose mentioned in sub-paragraph (1)(a) or (b).
- (9) In this paragraph –
  - “assistance” includes assistance provided in a country or territory other than the United Kingdom;
  - “information” includes documents;
  - “specified” means specified in the direction.

#### *Co-operation*

- 13 (1) A person within sub-paragraph (2) must co-operate with, and so far as practicable must not take any step that may reasonably be expected to impede, the Secretary of State in relation to the doing of anything by the Secretary of State –
  - (a) in preparation for or in connection with the first designation of a person under section 162(1), or
  - (b) in connection with the making of a transfer scheme.
- (2) The persons within this sub-paragraph are –
  - (a) National Grid plc and its associates (within the meaning of section 1152 of the Companies Act 2006);
  - (b) any person who, at any time during the period mentioned in sub-paragraph (3), has acquired property, rights or liabilities from a person within paragraph (a) (whether or not as a result of a transfer scheme under paragraph 1).
- (3) The period mentioned in sub-paragraph (2)(b) is the period beginning on 20 July 2021 and ending with the first designation of a person under section 162(1).

#### *Reimbursement and compensation: further provision*

- 14 (1) The Secretary of State may reimburse a person in respect of expenditure reasonably incurred by the person –
  - (a) in preparation for or in connection with the designation of a person under section 162(1), or
  - (b) in connection with the making of a transfer scheme.

- (2) The Secretary of State may make regulations providing for the payment of compensation by the Secretary of State to a person (other than the transferor in relation to a transfer scheme) who has suffered loss or damage in consequence of anything done by the Secretary of State in preparation for or in connection with the designation of a person under section 162(1).

## SCHEDULE 10

Section 175

### INDEPENDENT SYSTEM OPERATOR AND PLANNER: PENSIONS

#### *Introductory*

- 1 (1) In this Schedule –
- “active member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “associate” has the same meaning as in section 1152 of the Companies Act 2006;
  - “member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “prescribed” means prescribed by regulations made by the Secretary of State;
  - “qualifying accrued rights” means –
    - (a) any right which, at the relevant time, has accrued to or in respect of a qualifying member of a qualifying pension scheme to future benefits under the scheme,
    - (b) any entitlement under a qualifying pension scheme to the present payment of a pension or other benefit that a qualifying member of the scheme has at the relevant time, or
    - (c) any entitlement to benefits, or rights to future benefits, under a qualifying pension scheme that a person who has survived a qualifying member of the scheme has at the relevant time in respect of the member;
  - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member of the scheme;
  - “qualifying pension scheme” means a pension scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of –
    - (a) a transferor in relation to a transfer scheme under paragraph 1 of Schedule 9, or
    - (b) an associate of such a transferor;
  - “the relevant time” means the time immediately before the prescribed date (which may be before the passing of this Act).

- (2) For the purposes of the definition of “qualifying accrued rights” in sub-paragraph (1) –
  - (a) references to pensions or other benefits (including future benefits) include money purchase benefits;
  - (b) references to a right include a pension credit right.
- (3) In the event that a section of a qualifying pension scheme is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the qualifying pension scheme, any reference in this Schedule to the qualifying pension scheme includes a reference to that separate pension scheme.

*Participation in qualifying pension schemes and transfer of assets and rights*

- 2 (1) The Secretary of State may by regulations make such pensions provision as the Secretary of State considers appropriate –
  - (a) in preparation for or in connection with the designation of a person under section 162(1), or
  - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of Schedule 9.
- (2) “Pensions provision” means provision in connection with a qualifying pension scheme, including provision for –
  - (a) enabling an entity to which sub-paragraph (3) applies to participate in the scheme;
  - (b) the division of the scheme into different sections;
  - (c) the participation in the different sections of different persons (including entities to which sub-paragraph (3) applies);
  - (d) the allocation of assets, rights, liabilities or obligations between the different sections;
  - (e) the transfer of assets and qualifying accrued rights from the scheme to another pension scheme (whether or not a qualifying pension scheme), without the need for any approval or consent to the transfer;
  - (f) the valuation of assets and qualifying accrued rights in accordance with provision made by the regulations, for the purposes of their allocation to a particular section or for the purposes of their transfer as mentioned in paragraph (e);
  - (g) the discharge of liabilities in respect of qualifying accrued rights that are transferred.
- (3) This sub-paragraph applies to the following entities –
  - (a) the ISOP;
  - (b) an associate of the ISOP;
  - (c) any other entity which employs a person –
    - (i) whose contract of employment is transferred by a transfer scheme under paragraph 1 of Schedule 9, and

- (ii) who is an active member of the qualifying pension scheme at the relevant time.
- (4) Regulations under sub-paragraph (1) may have retrospective effect.
- (5) Before making regulations under sub-paragraph (1), the Secretary of State must consult—
  - (a) the trustee of the qualifying pension scheme or schemes in question, and
  - (b) the person who is the principal employer in relation to that scheme or those schemes.

*Amendment of qualifying pension schemes*

- 3 (1) The Secretary of State may by regulations make such amendments of a qualifying pension scheme as the Secretary of State considers appropriate—
  - (a) in preparation for or in connection with the designation of a person under section 162(1),
  - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of Schedule 9, or
  - (c) in connection with the making of regulations under paragraph 2 of this Schedule.
- (2) The provision that may be made under sub-paragraph (1) includes—
  - (a) provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the scheme to be determined in particular circumstances by reference to pensionable service under the scheme in question before and after the relevant time;
  - (b) provision for the transfer out of assets, rights, liabilities or obligations from one or more new sections of a qualifying pension scheme to another pension scheme (whether or not a qualifying pension scheme);
  - (c) provision for the transfer in of assets, rights, liabilities or obligations to one or more new sections of one qualifying pension scheme from one or more new sections of another qualifying pension scheme.
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the Secretary of State must consult—
  - (a) the trustee of the qualifying pension scheme being amended, and
  - (b) the person who is the principal employer in relation to that scheme.
- (5) In this paragraph—
  - (a) the reference to making amendments of a qualifying pension scheme includes a reference to amending the trust deed or rules of that scheme or any other instrument relating to the constitution, management or operation of the scheme;

- (b) references to a “new” section of a qualifying pension scheme are to one of the sections into which the scheme is divided by regulations under paragraph 2(1);
- (c) “pensionable service” has the same meaning as in section 124(1) of the Pensions Act 1995.

*Protection against adverse treatment*

- 4 (1) When exercising the power to make regulations under paragraph 2 or 3, the Secretary of State must ensure that the following requirements are met in respect of each person who is or has been a qualifying member of a qualifying pension scheme—
- (a) the general scheme requirement;
  - (b) where the regulations relate to a person’s rights or entitlements to money purchase benefits other than pensions in payment, the money purchase requirement.
- (2) The general scheme requirement is that the provision for the payment of pensions or other benefits that is contained in a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before its exercise.
- (3) The money purchase requirement is that the value of the rights or entitlements to money purchase benefits, other than pensions in payment, that a person has under a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) immediately after, and as a result of, the exercise of the power is at least equivalent to the value of the person’s rights or entitlements before its exercise.
- (4) Nothing in sub-paragraph (1) requires—
- (a) the different sections (if any) of a qualifying pension scheme to be established in a particular way,
  - (b) particular provisions of the sections, or of a pension scheme to which a transfer is made by virtue of paragraph 2(2)(e), to take the same or similar form, or
  - (c) any power or duty conferred or imposed by a qualifying pension scheme to be exercised or performed in a particular way.
- (5) The power of the Secretary of State to amend a qualifying pension scheme may not be exercised in any way that would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
- (a) the applicable consent requirements are satisfied in respect of the exercise of the power in that way, or
  - (b) the scheme is amended in the prescribed manner.



- (6) The applicable consent requirements are the requirements that apply in relation to obtaining the consent of members of the scheme to its amendment (including any such requirements set out in the trust deed or rules of the scheme).

*Information and assistance*

- 5 (1) The Secretary of State may direct a person within sub-paragraph (3) to provide the Secretary of State with—
- (a) such specified pensions information, or
  - (b) such specified assistance,
- as the Secretary of State may reasonably require in preparation for or in connection with the exercise of a power conferred on the Secretary of State by this Schedule.
- (2) “Pensions information” means information that—
- (a) relates to pensions or other benefits under a qualifying pension scheme, or
  - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme.
- (3) The following persons are within this sub-paragraph—
- (a) the trustee of a qualifying pension scheme;
  - (b) any person who exercises functions on behalf of a person within paragraph (a);
  - (c) any person who is or has been an employer of a qualifying member of a qualifying pension scheme.
- (4) The power under sub-paragraph (1) ceases to be exercisable—
- (a) at the end of the period of 3 years beginning with the time from which the first designation under section 162(1) has effect, or
  - (b) if at any time before the end of that period a transfer scheme is made under paragraph 1(1) of Schedule 9, at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect.
- (5) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the Secretary of State with the specified pensions information or assistance—
- (a) within the specified period, and
  - (b) in the specified form and manner.
- (6) A direction under sub-paragraph (1) is enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or

- (c) for any other appropriate remedy or relief.
- (7) The Secretary of State must reimburse a person for costs reasonably incurred by the person in complying with a direction under sub-paragraph (1).
- (8) In this paragraph, “specified” means specified in the direction.

#### *Consultation*

- 6 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

#### *National Security and Investment Act 2021*

- 7 The exercise by the Secretary of State of a power conferred on the Secretary of State by any provision of this Schedule is not a trigger event for the purposes of the National Security and Investment Act 2021.

### SCHEDULE 11

Section 179

#### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 5

#### *Gas Act 1986*

- 1 The Gas Act 1986 is amended as follows.
- 2 In section 6A (exemptions from prohibition), in subsection (1), after “(c)” insert “, (ca)”.

#### *Electricity Act 1989*

- 3 The Electricity Act 1989 is amended as follows.
- 4 In section 4 (prohibition on unlicensed supply, transmission etc of electricity), in subsection (3A)–
- (a) omit paragraph (a) (including the “or” at the end);
  - (b) in paragraph (b), for “such a transmission system” substitute “a transmission system by means of which the transmission of electricity takes place”.
- 5 In section 5 (exemptions from prohibition), in subsection (1), after “(c),” insert “(ca),”.
- 6 In section 10 (powers etc of licence holders), in subsection (1)(a), after “licence” insert “or of an electricity system operator licence”.
- 7 In section 49 (keeping of register), in subsection (2)(c), after “under” insert “or in respect of”.

*Utilities Act 2000*

- 8 (1) Section 105 of the Utilities Act 2000 (general restrictions on disclosure of information) is amended as follows.
- (2) In subsection (1)(a), after “Part 1 of the Energy Act 2023” (inserted by paragraph 5(a) of Schedule 5 to this Act) insert “or Part 5 of that Act”.
- (3) In subsection (4), after paragraph (ba) insert—
- “(bb) for the purpose of facilitating the performance by the Independent System Operator and Planner of any of its functions;”.
- (4) In subsection (10), at the appropriate place insert—
- ““the Independent System Operator and Planner” means the person for the time being designated under section 162(1) of the Energy Act 2023;”.

SCHEDULE 12

Section 200(1)

GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES: TRANSITIONAL PROVISION

*Meaning of “qualifying document”, “qualifying contract” and “qualifying central system”*

- 1 (1) In this Schedule, “qualifying document” means a document that—
- (a) is maintained in accordance with the conditions of a relevant licence, and
- (b) is designated for the purposes of this Schedule by notice given by the Secretary of State.
- (2) Where at any time after the day on which this paragraph comes into force the whole or part of the provision made by a qualifying document is incorporated into a different document (“document B”), document B is to be treated for the purposes of this Schedule as if it were a qualifying document even if it is not designated under sub-paragraph (1)(b).
- (3) In this Schedule, “qualifying contract” means a contract—
- (a) that constitutes the whole or part of the arrangements under which a qualifying document has effect,
- (b) that relates to the governance of a qualifying document, or
- (c) that is a central system contract.
- (4) For the purposes of sub-paragraph (3)(c), a contract is a “central system contract” if—
- (a) it relates to the operation of a qualifying central system, and
- (b) the person responsible for operating or procuring the operation of the central system is a party to the contract.

- (5) In this Schedule, “qualifying central system” means a central system that is designated for the purposes of this Schedule by notice given by the Secretary of State.
- (6) The Secretary of State may revoke a designation under sub-paragraph (1)(b) or (5).
- (7) The Secretary of State may not designate a document or central system under sub-paragraph (1)(b) or (5), or revoke a designation, except so as to give effect to a recommendation of the GEMA.
- (8) Before making a recommendation to the Secretary of State for the purposes of sub-paragraph (7), the GEMA must consult such persons as it considers appropriate.

*Purposes for which powers under this Schedule may be exercised*

- 2 (1) The GEMA may exercise a power conferred on it by paragraph 4, 6, 7, 8 or 11 only if the GEMA considers it appropriate to exercise the power –
  - (a) for the purposes of or in connection with establishing the role of code manager in respect of a document that is expected to become a designated document,
  - (b) in preparation for the granting of a code manager licence to a person in respect of a designated document,
  - (c) for the purposes of facilitating the carrying out by the GEMA of its functions under this Part,
  - (d) for the purposes of promoting the efficient governance of arrangements under one or more qualifying documents (subject to sub-paragraph (2)), or
  - (e) for the purposes of harmonising the governance of particular qualifying documents or of qualifying documents in general.
- (2) Sub-paragraph (1)(d) does not apply to the exercise of the power conferred by paragraph 6 in relation to a qualifying contract within paragraph 1(3)(b) or (c).

*Expiry of powers under this Schedule*

- 3 The powers conferred on the GEMA by paragraphs 4, 6, 7, 8 and 11 in relation to a particular qualifying document expire –
  - (a) when the document becomes a designated document, or
  - (b) if earlier, at the end of the period of 7 years after the day on which this Act is passed.

*Modification of qualifying documents and relevant licences*

- 4 (1) The GEMA may modify –
  - (a) a qualifying document;
  - (b) the conditions of a particular relevant licence;

- (c) the standard conditions of relevant licences of a particular type.
- (2) Before making a modification under sub-paragraph (1), the GEMA must—
  - (a) publish a notice about the proposed modification,
  - (b) send a copy of the notice to the persons listed in sub-paragraph (3), and
  - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (3) The persons mentioned in sub-paragraph (2)(b) are—
  - (a) the Secretary of State;
  - (b) each relevant licence holder;
  - (c) the National Association of Citizens Advice Bureaux;
  - (d) the Scottish Association of Citizens Advice Bureaux;
  - (e) Consumer Scotland;
  - (f) where the proposed modification relates to a licence for the purposes of section 5 of the Gas Act 1986, the Health and Safety Executive;
  - (g) such other persons as the GEMA considers appropriate.
- (4) A notice under sub-paragraph (2) must—
  - (a) state that the GEMA proposes to make a modification;
  - (b) set out the proposed modification and its effect;
  - (c) specify the date from which the GEMA proposes that the modification will have effect;
  - (d) state the reasons why the GEMA proposes to make the modification.
- (5) If, after complying with sub-paragraphs (2) to (4) in relation to a modification, the GEMA decides to make a modification, it must publish a notice about the decision.
- (6) A notice under sub-paragraph (5) must—
  - (a) state that the GEMA has decided to make the modification;
  - (b) set out the modification and its effect;
  - (c) specify the date from which the modification has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under sub-paragraph (2);
  - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this paragraph about a modification or decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- (8) In this paragraph, “relevant licence holder” –

- (a) in relation to the modification of a qualifying document, means the holder of a relevant licence in accordance with the conditions of which the document is maintained;
  - (b) in relation to the modification of standard conditions of relevant licences of any type, means the holder of a relevant licence of that type –
    - (i) that is to be modified by the inclusion of any new standard condition, or
    - (ii) that includes any standard conditions to which the modifications relate which are in effect during the period specified by virtue of sub-paragraph (2)(c);
  - (c) in relation to the modification of a condition of a particular relevant licence (other than a standard condition), means the holder of that particular relevant licence.
- (9) For the purposes of this paragraph, “modification”, in relation to a qualifying document, includes the incorporation of the whole or part of the provision made by the document into another document.
- 5 (1) Sub-paragraphs (2) and (3) apply where at any time the GEMA modifies the conditions of licences of any type under paragraph 4.
- (2) If the conditions modified are standard conditions, the GEMA must –
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The GEMA may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient.
- (4) The modification of part of a standard condition of a particular licence under paragraph 4 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 Electricity Act 1989 (in the case of a licence under section 6(1) of that Act) or Part 1 of the Gas Act 1986 (in the case of a licence under section 7, 7ZA, 7A or 7AB of that Act).

#### *Amendment or termination of qualifying contracts*

- 6 (1) The GEMA may amend a qualifying contract.
- (2) Before making an amendment under sub-paragraph (1), the GEMA must –
- (a) send a notice about the proposed amendment to the persons listed in sub-paragraph (4), and
  - (b) consider any representations made within the period specified in the notice about the proposed amendment or the date from which it would take effect.

- (3) A notice under sub-paragraph (2) must—
- (a) state that the GEMA proposes to make an amendment;
  - (b) set out the proposed amendment and its effect;
  - (c) specify the date from which the GEMA proposes that the amendment will have effect;
  - (d) state the reasons why the GEMA proposes to make the amendment.
- (4) The persons mentioned in sub-paragraph (2)(a) are—
- (a) each person who is a party to the contract to which the proposed amendment relates;
  - (b) any person liable by virtue of paragraph 12 to make a payment by way of compensation as a result of the proposed amendment;
  - (c) such other persons as the GEMA considers appropriate.
- (5) If, after complying with sub-paragraphs (2) to (4) in relation to an amendment, the GEMA decides to make an amendment, it must send a notice to the persons listed in sub-paragraph (4) about the decision.
- (6) A notice under sub-paragraph (5) must—
- (a) state that the GEMA has decided to make the amendment;
  - (b) set out the amendment and its effect;
  - (c) specify the date from which the amendment has effect;
  - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under sub-paragraph (2);
  - (e) state the reason for any differences between the amendment set out in the notice and the proposed amendment.
- (7) In this paragraph, “amend”, in relation to a contract, includes terminate.

#### *Arrangements in connection with code consolidation*

- 7 (1) The GEMA may, in connection with the consolidation of one or more qualifying documents, make a scheme for the purpose of securing the continued effect of rights or liabilities under a contract that is a qualifying contract within paragraph 1(3)(a).
- (2) “Consolidation”, in relation to a qualifying document, means the incorporation of the whole or part of the provision made by the document into another document.
- (3) A scheme under this paragraph may make incidental, supplementary or consequential provision (including provision amending the qualifying contract).

#### *Transfer schemes*

- 8 (1) The GEMA may make one or more schemes for the transfer of designated property, rights or liabilities from one person (“the transferor”) to another person (“the transferee”) where the condition in sub-paragraph (2) is met.

- (2) The condition is that the designated property, rights or liabilities –
  - (a) relate to the operation of the provisions of a qualifying document, and
  - (b) are reasonably required by the transferee for the purposes of its obligations under a code manager licence (whether or not the licence has yet been granted to the transferee).
- (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 GEMA 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) Sub-paragraph (6)(b) does not apply to references in –
  - (a) primary legislation, or



- (b) an instrument made under primary legislation.
- (8) A scheme may –
- (a) include incidental, supplementary or consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different purposes;
  - (d) make provision subject to exceptions.
- (9) In this paragraph –
- “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 transfer is to have effect.
- 9 (1) Before making a scheme under paragraph 8, the GEMA must consult –
- (a) the transferor;
  - (b) the transferee;
  - (c) such other persons as the GEMA considers appropriate.
- (2) The approval of the Secretary of State is required for the making of a scheme under paragraph 8.
- 10 (1) The GEMA may modify a scheme under paragraph 8.
- (2) The power under sub-paragraph (1) is not exercisable in relation to a scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect.
- (3) Paragraphs 8 and 9 apply in relation to the modification of a scheme as they apply in relation to the making of the scheme.

### *Information*

- 11 (1) The GEMA may direct a person who holds information reasonably required by the GEMA –
- (a) in preparation for the granting of a code manager licence, or
  - (b) for the purposes of or in connection with the exercise of any of the other functions of the GEMA under this Schedule,
- to provide the information to the GEMA.
- (2) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the GEMA with the information –
- (a) within the period specified in the direction, and

- (b) in the form and manner so specified.
- (3) A direction given to a person under sub-paragraph (1) is enforceable by the GEMA in civil proceedings –
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.

### *Compensation*

- 12 (1) The relevant code manager must make a payment to a person within sub-paragraph (2) in compensation for financial loss suffered by the person in consequence of the exercise by the GEMA of –
- (a) the power under paragraph 6 in relation to a qualifying contract within paragraph 1(3)(b) or (c), or
  - (b) the power under paragraph 8 (transfer schemes).
- (2) The persons within this sub-paragraph are –
- (a) a person who is a party to a contract that is amended or terminated under paragraph 6;
  - (b) the transferor in relation to a scheme under paragraph 8;
  - (c) a person, other than the transferor or transferee in relation to a scheme under paragraph 8, who has a right in relation to anything transferred by the scheme.
- (3) The amount of a payment under sub-paragraph (1) is to be –
- (a) in a case relating to the exercise of the power under paragraph 6, such amount as the GEMA considers to be just;
  - (b) in a case relating to the exercise of the power under paragraph 8, an amount specified in or determined in accordance with provision made in the scheme in question.
- (4) In this paragraph, “the relevant code manager” means –
- (a) in relation to the exercise of the power under paragraph 6, the person who holds a code manager licence in relation to the document to which the qualifying contract in question relates;
  - (b) in relation to the exercise of the power under paragraph 8, the person who is the transferee in relation to the scheme in question.
- (5) The GEMA may in a particular case direct –
- (a) which person is the relevant code manager for the purposes of this paragraph;
  - (b) that two or more persons are jointly to be the relevant code manager for those purposes.
- (6) The Secretary of State may in a particular case direct that the duty under sub-paragraph (1) is to be discharged by a person specified in the direction (instead of by the relevant code manager).

*Other*

- 13 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

SCHEDULE 13

Section 200(2)

GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES: PENSIONS

*Introductory*

- 1 (1) In this Schedule—
- “active member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “associate” has the same meaning as in section 1152 of the Companies Act 2006;
  - “member” has the same meaning as in section 124(1) of the Pensions Act 1995;
  - “prescribed” means prescribed by regulations made by the GEMA;
  - “qualifying accrued rights” means—
    - (a) any right which, at the relevant time, has accrued to or in respect of a qualifying member of a qualifying pension scheme to future benefits under the scheme,
    - (b) any entitlement under a qualifying pension scheme to the present payment of a pension or other benefit that a qualifying member of the scheme has at the relevant time, or
    - (c) any entitlement to benefits, or rights to future benefits, under a qualifying pension scheme that a person who has survived a qualifying member of the scheme has at the relevant time in respect of the member;
  - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member of the scheme;
  - “qualifying pension scheme” means a scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of—
    - (a) a transferor in relation to a scheme under paragraph 8 of Schedule 12, or
    - (b) an associate of such a transferor;
  - “the relevant time” means the time immediately before the prescribed date (which may be before the passing of this Act).

- (2) For the purposes of the definition of “qualifying accrued rights” in sub-paragraph (1) –
  - (a) references to pensions or other benefits (including future benefits) include money purchase benefits;
  - (b) references to a right include a pension credit right.
- (3) In the event that a section of a qualifying pension scheme is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the qualifying pension scheme, any reference in this Schedule to the qualifying pension scheme includes a reference to that separate pension scheme.

*Participation in qualifying pension schemes and transfer of assets and rights*

- 2 (1) The GEMA may by regulations make such pensions provision as it considers appropriate in preparation for the granting of a code manager licence to a person in respect of a designated document.
- (2) “Pensions provision” means provision in connection with a qualifying pension scheme, including provision for –
  - (a) enabling a person to participate in the scheme;
  - (b) the division of the scheme into different sections;
  - (c) the participation in the different sections of different persons;
  - (d) the allocation of assets, rights, liabilities or obligations between the different sections;
  - (e) the transfer of assets and qualifying accrued rights from the scheme to another pension scheme (whether or not a qualifying pension scheme), without the need for any approval or consent to the transfer;
  - (f) the valuation of assets and qualifying accrued rights in accordance with provision made by the regulations, for the purposes of their allocation to a particular section or for the purposes of their transfer as mentioned in paragraph (e);
  - (g) the discharge of liabilities in respect of qualifying accrued rights that are transferred.
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the GEMA must consult –
  - (a) the trustee of the qualifying pension scheme or schemes in question, and
  - (b) the person who is the principal employer in relation to that scheme or those schemes.
- (5) The approval of the Secretary of State is required for the making of regulations under sub-paragraph (1).

*Amendment of qualifying pension schemes*

- 3 (1) The GEMA may by regulations make such amendments of a qualifying pension scheme as it considers appropriate—
  - (a) in preparation for the granting of a code manager licence to a person in respect of a designated document, or
  - (b) in connection with the making of regulations under paragraph 2.
- (2) The provision that may be made under sub-paragraph (1) includes—
  - (a) provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the scheme to be determined in particular circumstances by reference to pensionable service under the scheme in question before and after the relevant time;
  - (b) provision for the transfer out of assets, rights, liabilities or obligations from one or more new sections of a qualifying pension scheme to another pension scheme (whether or not a qualifying pension scheme);
  - (c) provision for the transfer in of assets, rights, liabilities or obligations to one or more new sections of one qualifying pension scheme from one or more new sections of another qualifying pension scheme.
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the GEMA must consult—
  - (a) the trustee of the qualifying pension scheme being amended, and
  - (b) the person who is the principal employer in relation to that scheme.
- (5) The approval of the Secretary of State is required for the making of regulations under sub-paragraph (1).
- (6) In this paragraph—
  - (a) the reference to making amendments of a qualifying pension scheme includes a reference to amending the trust deed or rules of that scheme or any other instrument relating to the constitution, management or operation of the scheme;
  - (b) references to a “new” section of a qualifying pension scheme are to one of the sections into which the scheme is divided by regulations under paragraph 2(1);
  - (c) “pensionable service” has the same meaning as in section 124(1) of the Pensions Act 1995.

*Protection against adverse treatment*

- 4 (1) When exercising the power to make regulations under paragraph 2 or 3, the GEMA must ensure that the following requirements are met in respect of each person who is or has been a qualifying member of a qualifying pension scheme—

- (a) the general scheme requirement;
  - (b) where the regulations relate to a person's rights or entitlements to money purchase benefits other than pensions in payment, the money purchase requirement.
- (2) The general scheme requirement is that the provision for the payment of pensions or other benefits that is contained in a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before its exercise.
- (3) The money purchase requirement is that the value of the rights or entitlements to money purchase benefits, other than pensions in payment, that a person has under a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) immediately after, and as a result of, the exercise of the power is at least equivalent to the value of the person's rights or entitlements before its exercise.
- (4) Nothing in sub-paragraph (1) requires—
- (a) the different sections (if any) of a qualifying pension scheme to be established in a particular way,
  - (b) particular provisions of the sections, or of a pension scheme to which a transfer is made by virtue of paragraph 2(2)(e), to take the same or similar form, or
  - (c) any power or duty conferred or imposed by a qualifying pension scheme to be exercised or performed in a particular way.
- (5) The power of the GEMA to amend a qualifying pension scheme may not be exercised in any way that would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
- (a) the applicable consent requirements are satisfied in respect of the exercise of the power in that way, or
  - (b) the scheme is amended in the prescribed manner.
- (6) The applicable consent requirements are the requirements that apply in relation to obtaining the consent of members of the scheme to its amendment (including any such requirements set out in the trust deed or rules of the scheme).

### *Information*

- 5 (1) The GEMA may direct a person who holds relevant pensions information to provide it to the GEMA.
- (2) “Pensions information” means specified information that—
- (a) relates to pensions or other benefits under a qualifying pension scheme, or
  - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme.

- (3) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the specified pensions information –
  - (a) within the specified period, and
  - (b) in the specified form and manner.
- (4) A direction under sub-paragraph (1) is enforceable by the GEMA in civil proceedings –
  - (a) for an injunction,
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
  - (c) for any other appropriate remedy or relief.
- (5) In this paragraph, “specified” means specified in the direction.

#### SCHEDULE 14

Section 201

#### MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 6

##### *Gas Act 1986*

- 1 The Gas Act 1986 is amended as follows.
- 2 In section 6A(1) (power to grant exemptions from prohibition), for “or (d)” substitute “, (d) or (e)”.
- 3 (1) Section 28 (orders for securing compliance with certain provisions) is amended as follows.
  - (2) In subsection (8), in the definition of “regulated person”, after paragraph (f) insert –

“(g) a responsible body for a central system;”.
  - (3) After subsection (8) insert –

“(8A) In paragraph (g) of the definition of “regulated person” in subsection (8), the reference to a responsible body for a central system is a reference to a person for the time being specified in a notice under section 184(1) of the Energy Act 2023 in relation to a designated central system (within the meaning of Part 6 of that Act).”
- 4 In Schedule 4B (provisions imposing obligations enforceable as relevant requirements), after paragraph 9A insert –

*“Responsible bodies for central systems*

  - 9B (1) Section 194(3) of the Energy Act 2023 is a relevant provision in relation to a responsible body for a central system.
  - (2) The reference in sub-paragraph (1) to a responsible body for a central system is a reference to a person for the time being

specified in a notice under section 184(1) of the Energy Act 2023 in relation to a designated central system (within the meaning of Part 6 of that Act).”

#### *Electricity Act 1989*

- 5 The Electricity Act 1989 is amended as follows.
- 6 In section 5(1) (power to grant exemptions from prohibition), for “or (e)” substitute “, (e) or (f)”.
- 7 (1) Section 25 (orders for securing compliance) is amended as follows.
- (2) In subsection (8), in the definition of “regulated person”, after paragraph (d) insert—
- “(da) a responsible body for a central system;”;
- (3) After subsection (8) insert—
- “(8A) In paragraph (da) of the definition of “regulated person” in subsection (8), the reference to a responsible body for a central system is a reference to a person for the time being specified in a notice under section 184(1) of the Energy Act 2023 in relation to a designated central system (within the meaning of Part 6 of that Act).”
- 8 In Schedule 6A (provisions imposing obligations enforceable as relevant requirements), after paragraph 9 insert—
- “Responsible bodies for central systems*
- 9ZA(1) Section 194(3) of the Energy Act 2023 is a relevant provision in relation to a responsible body for a central system.
- (2) The reference in sub-paragraph (1) to a responsible body for a central system is a reference to a person for the time being specified in a notice under section 184(1) of the Energy Act 2023 in relation to a designated central system (within the meaning of Part 6 of that Act).”

#### *Energy Act 2004*

- 9 The Energy Act 2004 is amended as follows.
- 10 In section 173 (appeals to the Competition and Markets Authority), after subsection (2B) insert—
- “(2C) This section also applies to a decision by GEMA to modify a designated document (within the meaning of Part 6 of the Energy Act 2023) under section 192 of that Act.”
- 11 (1) Schedule 22 (procedure for appeals under section 173) is amended as follows.



- (2) In paragraph 4 (time limit for representations and observations) –
- (a) in sub-paragraph (1), for the words from “fifteen working days” to the end substitute “the relevant period”;
  - (b) after sub-paragraph (1) insert –
    - “(1A) “The relevant period” means –
    - (a) 15 working days following the day of the making of the application for permission to bring the appeal, or
    - (b) such longer period following that day as an authorised member of the CMA may allow.”;
  - (c) in sub-paragraph (2), for “that period of fifteen working days” substitute “the relevant period”.
- (3) In paragraph 6 (timetable for determination of appeal) –
- (a) in sub-paragraph (1), for “thirty working days” substitute “4 months”;
  - (b) in sub-paragraph (2) –
    - (i) for “thirty working days” substitute “4 months”;
    - (ii) for “ten more working days” substitute “1 month”.

*Energy Act 2023*

- 12 In section 89 –
- (a) in subsection (1)(a) –
    - (i) after “7”, insert “or 7AC”;
    - (ii) after “transporters” insert “or code manager licence”;
  - (b) in subsection (1)(c), after “7” insert “or 7AC”.

SCHEDULE 15

Section 203

COMPETITIVE TENDERS FOR ELECTRICITY PROJECTS

PART 1

AMENDMENTS OF ELECTRICITY ACT 1989

- 1 The Electricity Act 1989 is amended as follows.
- 2 After section 6B insert –
- “6BA Meaning of “relevant electricity project”, “relevant licence” and “relevant contract”**
- (1) In this Part, “relevant electricity project” means a project –
- (a) that relates to the total system, an electricity interconnector or a multi-purpose interconnector, and

- (b) in relation to which criteria specified in regulations made by the Secretary of State are satisfied.
- (2) In subsection (1)(a), “the total system” means all transmission systems and distribution systems in Great Britain and offshore waters.
- (3) In this Part, “relevant licence” means—
  - (a) a transmission licence that does not authorise the licence holder to co-ordinate and direct the flow of electricity as described in section 4(3A)(a);
  - (b) a generation licence, a distribution licence, an interconnector licence or an MPI licence.
- (4) In this Part, “relevant contract” means a contract, entered into by a person with the holder of a transmission licence, a system operator electricity licence or a distribution licence (referred to in this Part as a “contract counterparty”), for the carrying out of a relevant electricity project.
- (5) Regulations under this section may make different provision for different purposes.
- (6) Before making regulations under this section, the Secretary of State must consult—
  - (a) the Authority,
  - (b) such holders of relevant licences as the Secretary of State considers appropriate, and
  - (c) such other persons as the Secretary of State considers appropriate.

#### **6BB Designation of a delivery body**

- (1) The Secretary of State may by regulations designate a person for the purposes of this section; and a person so designated is referred to in this Part as a “delivery body”.
- (2) The designation of a person for the purposes of this section has effect subject to any conditions imposed by the Secretary of State in the regulations designating the person.
- (3) More than one person may be designated for the purposes of this section at the same time.
- (4) Regulations under this section may designate different persons for different purposes.
- (5) The Secretary of State may by regulations revoke a person’s designation if the person ceases to meet any condition subject to which the designation has effect.

- (6) The Secretary of State may make indemnity payments to a delivery body (subject to subsection (9)).
- (7) An indemnity payment is a payment in respect of costs or expenses incurred by a delivery body in connection with judicial review proceedings in relation to anything done, or omitted to be done, in the exercise (or purported exercise) of functions conferred on the body by regulations under section 6C.
- (8) An indemnity payment may be made subject to such conditions as may be determined by the Secretary of State.
- (9) Subsection (6) does not authorise the making of a payment to the Authority (where it is designated under subsection (1)).”

3 For sections 6C and 6D substitute –

**“6C Competitive tenders**

- (1) The Authority may by regulations (“tender regulations”) make such provision as appears to it to be appropriate for facilitating the making by a delivery body of –
  - (a) a decision whether to hold a tender exercise in relation to a relevant electricity project;
  - (b) in prescribed circumstances, a determination on a competitive basis of any of the matters listed in subsection (2).
- (2) Those matters are –
  - (a) the person by whom a relevant electricity project is to be carried out;
  - (b) the person to whom a relevant licence is to be granted (whether for the purposes of a relevant electricity project or otherwise);
  - (c) the person to whom a relevant contract is to be awarded.
- (3) The provision mentioned in subsection (1) includes –
  - (a) provision for the Authority to determine, in prescribed cases, whether a tender exercise should be held, or continued, in relation to a relevant electricity project;
  - (b) provision for the publication, in prescribed cases, of a proposal for a relevant licence to be granted or for a relevant contract to be awarded;
  - (c) provision for the inclusion in such a proposal of an invitation to apply for such a licence or to bid for such a contract;
  - (d) provision restricting applications and bids and imposing requirements as to the period within which they must be made;
  - (e) provision for regulating the manner in which applications and bids are considered and determined.

- (4) The provision mentioned in subsection (1) also includes—
  - (a) provision conferring functions on a delivery body;
  - (b) provision authorising the Authority to conduct a review of the exercise by a delivery body of functions conferred on it by the regulations;
  - (c) provision authorising the Authority to appoint another person to conduct such a review on the Authority’s behalf.
- (5) The provision that may be made by virtue of subsection (4)(a) includes provision requiring a delivery body, in prescribed circumstances, to provide information about prescribed matters to the Authority.
- (6) Tender regulations—
  - (a) may make provision by reference to a determination by the Authority or by a delivery body, or to the opinion of the Authority or of a delivery body, as to any matter;
  - (b) may dispense with or supplement provision made in relation to applications for relevant licences by or under section 6A or 6B.
- (7) The approval of the Secretary of State is required for the making of tender regulations.
- (8) The making of a determination by virtue of subsection (2)(b) or (c) that a person is to be granted a relevant licence or awarded a relevant contract does not of itself require—
  - (a) the Authority to exercise its power to grant a relevant licence to the person, or
  - (b) a contract counterparty to award a relevant contract to the person,(as the case may be).

#### **6CA Power to require information**

- (1) Tender regulations may include provision authorising a person to whom subsection (2) applies (“P”), by notice given to another person (an “information notice”), to require the other person to provide relevant information to P.
- (2) This subsection applies to—
  - (a) the Authority;
  - (b) a delivery body;
  - (c) a contract counterparty.
- (3) “Relevant information” means information that P reasonably requires for the purposes of or in connection with the exercise of P’s functions.

- (4) References in this section to the Authority include a person appointed by the Authority by virtue of section 6C(4)(c), where the information sought relates to a function conferred by virtue of section 6C(4)(b) (review of activities of delivery body).
- (5) Provision made by virtue of subsection (1) must require an information notice –
  - (a) to specify or describe the information sought, and
  - (b) to specify the time by which the information must be provided.
- (6) Provision made by virtue of subsection (1) may include provision –
  - (a) for an information notice and information obtained in pursuance of it to be shared with the Authority, where the notice is given by a person other than the Authority;
  - (b) for the classification and protection of confidential or sensitive information;
  - (c) for the enforcement by the Authority of a requirement to provide information in pursuance of an information notice;
  - (d) for the amount of any financial penalty imposed on a person by virtue of paragraph (c) to be determined by the Authority in accordance with tender regulations.
- (7) Where by virtue of subsection (6)(c) tender regulations provide for the imposition of a financial penalty, they must also include provision for a right of appeal against the imposition of the penalty.

#### **6CB Recovery of tender costs**

- (1) Tender regulations may include provision requiring –
  - (a) the payment to the Authority or a delivery body, in prescribed circumstances, of amounts in respect of –
    - (i) tender costs of the Authority, or of the delivery body, in relation to a tender exercise;
    - (ii) such amounts in respect of the Authority’s tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise;
    - (iii) such amounts in respect of the delivery body’s tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise.
  - (b) the provision to the Authority or to a delivery body, in prescribed circumstances, of a deposit of a prescribed amount in respect of a liability which a person has, or may in future have, by virtue of paragraph (a) in relation to a relevant licence or relevant contract;

- (c) the provision to the Authority or to a delivery body, in prescribed circumstances, of security in a form approved by it in respect of such a liability.
- (2) The provision that may be made by virtue of subsection (1)(a) includes provision requiring the payment of cost assessment costs incurred by –
  - (a) the Authority, or
  - (b) the delivery body,after the Authority or delivery body (as the case may be) has taken the steps required by virtue of subsections (7) to (9) in relation to the tender exercise.
- (3) The regulations may require the payments to be made, or the deposit or security to be provided, by one or more of the following –
  - (a) any person who has made a connection request for the purposes of which the tender exercise has been, is being, or is to be, held;
  - (b) any person who made a connection request for the purposes of which any previous tender exercise relating to the same transmission system, or a transmission system consisting of some or all of the same lines or plant or connecting any of the same generating stations or substations, was held;
  - (c) any person who made a connection request for the purposes of which any previous tender exercise relating to the same distribution system, or a distribution system consisting of some or all of the same lines or plant or connecting any of same premises or other distribution systems, was held;
  - (d) any person who operates a generating station which is connected to the transmission or distribution system to which the tender exercise relates;
  - (e) any person who submits an application for the relevant licence or bids for the award of a relevant contract to which the tender exercise relates;
  - (f) any person who is the holder of a transmission licence, a distribution licence, an interconnector licence or an MPI licence.
- (4) The regulations may make provision about how –
  - (a) payments are to be made, and
  - (b) deposits or other forms of security are to be provided,including provision for them to be made or provided by a person approved by the Authority or by a delivery body.
- (5) The regulations may include provision about –

- (a) the times at which payments are to be made, or deposits or other forms of security are to be provided, under the regulations;
  - (b) the circumstances in which a payment made in accordance with regulations made by virtue of subsection (1)(a) is to be repaid (wholly or in part);
  - (c) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
  - (d) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with the regulations is to be released or forfeited (wholly or in part);
  - (e) the effect on a person's participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this section, and the circumstances in which the tender exercise is to stop as a result of such a failure.
- (6) The regulations may include provision for –
- (a) the review by the Authority, or by a person appointed by the Authority, of any tender costs determined by a delivery body;
  - (b) the amendment by a delivery body of its tender costs following such a review.
- (7) The regulations must ensure that, as soon as reasonably practicable after a tender exercise or series of tender exercises is finished –
- (a) where the Authority is the delivery body, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9) does not exceed the Authority's tender costs in respect of the exercise or series of exercises;
  - (b) in any other case, steps are taken by the delivery body, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9) does not exceed the aggregate of –
    - (i) the Authority's tender costs, and
    - (ii) the delivery body's tender costs,in respect of the exercise or series of exercises.
- (8) The regulations must also ensure that, in a case within subsection (7)(b), the aggregate of the amounts within subsection (9) so far as relating to any particular tender exercise does not include any amount that falls within paragraph (a) of the definition of tender costs in section 6CD(4) in relation to a different tender exercise.
- (9) The amounts are –

- (a) any fees under section 6A(2) in respect of applications for relevant licences,
- (b) any payments made or deposits provided in accordance with regulations made by virtue of subsection (1)(a) or (b) and not repaid, and
- (c) the value of any security provided in accordance with regulations made by virtue of subsection (1)(c) and forfeited in accordance with regulations made by virtue of subsection (5)(d),

so far as relating to the tender exercise or series of tender exercises in question.

### **6CC Competitive tenders: supplementary**

- (1) For the purposes of section 6CB(3), a person makes a connection request when the person makes an application to—
  - (a) the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
  - (b) an electricity distributor (whether in accordance with any provision made by the distributor’s licence or otherwise) for an offer of connection to and use of the distributor’s distribution system.
- (2) A person (“P”) is to be treated for those purposes as having made a connection request if—
  - (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (1)(a) or (b), and
  - (b) the benefit of that application, or any agreement resulting from it, is vested in P.
- (3) Where tender regulations—
  - (a) restrict the making of applications for relevant licences or bids for relevant contracts in relation to a relevant electricity project, or
  - (b) operate so as to prevent an application or bid from being considered or further considered, if the applicant does not meet one or more prescribed requirements,the regulations may make provision enabling a person to apply to a relevant body for a decision as to the effect of any such restriction or requirement if the person were to make such an application or bid.
- (4) Regulations made by virtue of subsection (3) may enable a relevant body to charge a person who makes such an application or bid a prescribed fee for any decision given in response to it.



- (5) Where the successful bidder, in relation to a tender exercise, already holds a relevant licence (“the existing licence”) –
- (a) the Authority may make such modifications of the existing licence as are necessary for the purpose of giving effect to the determination resulting from the tender exercise, and
  - (b) references in this Part to the grant of a relevant licence are to be read accordingly.
- (6) Before making any modifications under subsection (5)(a), the Authority must give notice –
- (a) stating that it proposes to make the modifications and setting out their effect, and
  - (b) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and must consider any representations or objections that are duly made and not withdrawn.
- (7) Any sums received by the Authority under tender regulations are to be paid into the Consolidated Fund.
- (8) In section 6CB and this section –
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system –
    - (a) by means of which the transmission of electricity takes place, and
    - (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));
  - “functions” includes powers and duties;
  - “relevant body” means the Authority, a delivery body or a contract counterparty.

#### **6CD Sections 6C to 6CC: further definitions**

- (1) This section defines expressions that are used in sections 6C to 6CC (as well as in this section).
- (2) “Prescribed” means prescribed in or determined under tender regulations.
- (3) “Tender exercise” means the steps taken in accordance with tender regulations with a view to determining one or more of the following –
- (a) the person by whom a relevant electricity project is to be carried out;
  - (b) the person to whom a relevant licence is to be granted;

(c) the person to whom a relevant contract is to be awarded.

(4) “Tender costs” means –

- (a) costs (including any cost assessment costs) incurred or likely to be incurred by the Authority for the purposes of a particular tender exercise or prospective tender exercise;
- (b) costs (including any cost assessment costs) incurred or likely to be incurred by a delivery body for the purposes of a particular tender exercise or prospective tender exercise;
- (c) such proportion as the Authority considers appropriate of the costs that –
  - (i) have been, or are likely to be, incurred by the Authority or by a delivery body under regulations under section 6C, and
  - (ii) are not directly attributable to a particular tender exercise.

(5) “Cost assessment costs”, in relation to a tender exercise, means costs incurred or likely to be incurred by the Authority or by a delivery body in connection with any assessment of –

- (a) costs that have been or are to be incurred in connection with any property, rights or liabilities necessary or expedient for the performance by a person of functions under a relevant licence granted or a relevant contract awarded to the person as a result of the tender exercise;
- (b) costs incurred in connection with any property, rights or liabilities that would have been necessary or expedient for the performance of functions under a relevant licence or a relevant contract if such a licence or contract had been granted or awarded to a person as a result of the tender exercise.

(6) “Successful bidder”, in relation to a tender exercise, is the person in respect of whom (as a result of the exercise) any of the following applies –

- (a) a delivery body determines that a relevant electricity project is to be carried out by the person;
- (b) a relevant licence has been or is to be granted to the person;
- (c) a relevant contract has been or is to be awarded to the person.

(7) Section 6C(8) applies for the purposes of subsections (3)(b) and (c) and (6)(b) and (c) as it applies for the purposes of section 6C(2)(b) and (c).”

4 In section 6E (property schemes) –

- (a) for “offshore transmission licences” substitute “relevant licences and awards of relevant contracts”;

- (b) in the heading, for “offshore transmission licences” substitute “relevant licences and contracts”.
- 5 (1) Section 6F (offshore transmission during commissioning period) is amended as follows.
- (2) In subsection (2), for “an offshore” substitute “a”.
- (3) In subsection (4) –
- (a) at the beginning insert “In relation to an offshore transmission system,”;
- (b) in paragraph (a), for “the tender regulations” substitute “offshore transmission tender regulations”.
- (4) After subsection (4) insert –
- “(4A) In relation to a transmission system other than an offshore transmission system, the third condition is that –
- (a) either –
- (i) a tender exercise for the granting of a relevant licence in respect of the system has been or is being held, or
- (ii) a delivery body has determined to hold a tender exercise for the granting of a relevant licence in respect of the system, and
- (b) the system, or anything forming part of it, has not been transferred to the successful bidder.”
- (5) In subsection (8) –
- (a) in the definition of “developer”, for the words from “section 6D(2)(a)” to the end substitute “section 6CB(3)(a) or (b) (person who makes the connection request, including any person who is to be so treated by virtue of section 6CC(2))”;
- (b) for the definitions of “offshore transmission” and “offshore transmission licence” substitute –
- ““offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area;
- “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission;
- “offshore transmission tender regulations” means tender regulations that provide for the determination on a competitive basis of the person to whom an offshore transmission licence is to be granted;”;
- (c) for the definitions of “successful bidder” and “tender exercise” substitute –
- ““tender exercise” has the meaning given by section 6CD(3);”;

- (d) in the definition of “relevant generating station”, for “an offshore” substitute “a”;
- (e) for the definition of “the tender regulations” substitute –
  - ““tender regulations” has the meaning given by section 6C(1).”
- (6) In the heading omit “Offshore”.
- 6 (1) Section 6G (meaning of “commissioning period”) is amended as follows.
  - (2) In subsection (1), for “an offshore” substitute “a”.
  - (3) Omit subsections (3) to (5).
  - (4) For subsection (6) substitute –
    - “(6) In this section –
      - “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place and the whole or part of which is at a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone;
      - “relevant co-ordination licence holder” means the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held.”
- 7 (1) Section 6H (modification of codes or agreements) is amended as follows.
  - (2) In subsection (1), for “a transmission licence or a distribution licence” substitute “a relevant licence”.
  - (3) For subsection (2) substitute –
    - “(2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of –
      - (a) implementing, or facilitating the implementation of, a determination made in accordance with regulations under section 6C, or
      - (b) implementing or facilitating the operation of section 6F or 6G.”
  - (4) For subsection (4) substitute –
    - “(4) Before making a modification under subsection (1) the Authority must –
      - (a) consult such persons as the Authority considers appropriate, and
      - (b) publish a notice –

- (i) stating that it proposes to make the modification and its reasons for proposing to make it,
  - (ii) setting out the proposed modification and its effect, and
  - (iii) specifying the time within which representations may be made (which must not be less than the period of 28 days beginning with the day on which the notice is published)."
- (5) In subsection (5), for “the Energy Act 2013” substitute “the Energy Act 2023”.
- (6) In subsection (7), after “subsection” insert “(4) or”.
- (7) Omit subsection (8).
- (8) In the heading, after “Sections” insert “6C,”.
- 8 In section 11A (modification of conditions of licences), after subsection (9) insert—

“(9A) This section does not apply to the modification of a licence in exercise of the power under section 6CC(5)(a) (modification of licence to give effect to determination on a tender exercise).”
- 9 In section 64(1) (interpretation etc of Part 1), at the appropriate places insert—

““contract counterparty” has the meaning given by section 6BA;”;

““delivery body” has the meaning given by section 6BB;”;

““offshore transmission” and “offshore transmission licence” have the meaning given by section 6F(8);”;

““offshore waters” means—

  - (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea, and
  - (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964;”;

““relevant contract” and “relevant licence” have the meaning given by section 6BA;”;

““relevant electricity project” has the meaning given by section 6BA;”;

““relevant licence” has the meaning given by section 6BA;”.
  - 10 Schedule 2A (property schemes) is amended in accordance with paragraphs 11 to 24.

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- 11 For paragraph 1 substitute –  
“*Scheme-making power*”
- 1 (1) This paragraph applies where a tender exercise is held in relation to a relevant electricity project, a relevant licence or a relevant contract.
- (2) The Authority may, on an application under paragraph 3, make a scheme (“a property scheme”) providing for –
- (a) the transfer to the successful bidder of, or
- (b) the creation in favour of the successful bidder of rights in relation to,
- any property, rights or liabilities necessary or expedient for construction, commissioning or operational purposes.”
- 12 In paragraph 2, at the end insert –
- “(5) A property scheme may not contain provision for the transfer of, or creation of rights in relation to, property, rights or liabilities that the Authority considers it appropriate for the successful bidder to acquire by other means.”
- 13 Omit paragraph 5.
- 14 In paragraph 12, for “operational purposes” substitute “construction, commissioning or operational purposes” in each of the following places –
- (a) sub-paragraphs (1) to (3);
- (b) sub-paragraph (10);
- (c) sub-paragraph (11) (in both places).
- 15 For paragraph 13 substitute –
- “13 On an application for a property scheme, no scheme may be made until either a relevant licence has been granted or a relevant contract has been awarded to the successful bidder.”
- 16 In paragraph 14 –
- (a) in sub-paragraph (4), for “operational purposes” substitute “construction, commissioning or operational purposes”;
- (b) in sub-paragraph (6), after paragraph (a) insert –
- “(aa) a delivery body,
- (ab) a contract counterparty,”.
- 17 In paragraph 15(2), for “operational purposes” substitute “construction, commissioning or operational purposes”.
- 18 Omit paragraph 16(1)(d).
- 19 In paragraph 25(2), for “operational purposes” substitute “construction, commissioning or operational purposes”.

- 20 In paragraph 30, for “operational purposes” substitute “construction, commissioning or operational purposes”.
- 21 (1) Paragraph 35 is amended as follows.
- (2) In sub-paragraph (2), for “the offshore transmission licence” substitute “a relevant licence”.
- (3) After sub-paragraph (2) insert—
- “(2A) Where a tender exercise is held, as soon as a contract counterparty is satisfied that it will enter into a relevant contract with a particular person if certain matters are resolved to the counterparty’s satisfaction, it must publish a notice to that effect.”
- (4) In sub-paragraph (3), for “The notice” substitute “A notice under sub-paragraph (2) or (2A)”.
- (5) After sub-paragraph (4) insert—
- “(4A) A contract counterparty may withdraw a notice given by it under sub-paragraph (2A) by publishing a notice to that effect.”
- (6) In sub-paragraph (5), after “(2)” insert “or (2A)”.
- 22 In paragraph 36—
- (a) omit sub-paragraph (1);
- (b) for sub-paragraph (2) substitute—
- “(2) Where as a result of a tender exercise the Authority determines to grant a relevant licence to a person, it must publish a notice to that effect.
- (2A) Where as a result of a tender exercise a person is awarded a relevant contract, the contract counterparty with which the contract is to be entered into must publish a notice to that effect.”.
- 23 After paragraph 36 insert—
- “Transmission owner and distribution network owner of last resort*
- 36A(1) Before directing the holder of a transmission licence to act as a transmission owner of last resort pursuant to the conditions of the licence, the Authority may publish a notice—
- (a) stating that it proposes to give the direction, and
- (b) identifying the licence holder to whom it proposes to give the direction.
- (2) Where a notice is published under sub-paragraph (1), this Schedule has effect as if—
- (a) the licence holder is the preferred bidder in relation to a tender exercise, and

- (b) the notice is one published under paragraph 35(2), identifying the licence holder as the preferred bidder.
  - (3) Paragraph 35(4) applies in relation to a notice published under sub-paragraph (1) of this paragraph as it applies to a notice published under paragraph 35(2).
  - (4) Where the Authority directs the holder of a transmission licence to act as a transmission owner of last resort pursuant to the conditions of the licence, this Schedule has effect as if—
    - (a) the licence holder is the holder of a transmission licence granted as a result of a tender exercise in which the licence holder was the successful bidder, and
    - (b) a notice has been published under paragraph 36 identifying the licence holder as the successful bidder in relation to the tender exercise.
- 36B(1) Before directing the holder of a distribution licence to act as a distribution network owner of last resort pursuant to the conditions of the licence, the Authority may publish a notice—
- (a) stating that it proposes to give the direction, and
  - (b) identifying the licence holder to whom it proposes to give the direction.
- (2) Where a notice is published under sub-paragraph (1), this Schedule has effect as if—
    - (a) the licence holder is the preferred bidder in relation to a tender exercise, and
    - (b) the notice is one published under paragraph 35(2), identifying the licence holder as the preferred bidder.
  - (3) Paragraph 35(4) applies in relation to a notice published under sub-paragraph (1) of this paragraph as it applies to a notice published under paragraph 35(2).
  - (4) Where the Authority directs the holder of a distribution licence to act as a distribution network owner of last resort pursuant to the conditions of the licence, this Schedule has effect as if—
    - (a) the licence holder is the holder of a distribution licence granted as a result of a tender exercise in which the licence holder was the successful bidder, and
    - (b) a notice has been published under paragraph 36 identifying the licence holder as the successful bidder in relation to the tender exercise.”
- 24 In paragraph 38(1)—
- (a) at the appropriate place insert—
    - ““construction, commissioning or operational purposes” means the purposes of performing any functions which the



successful bidder has, or may in future have under or by virtue of—

- (a) a relevant licence which has been, or is to be, granted as a result of the tender exercise,
- (b) a relevant contract which has been, or is to be, awarded as a result of the tender exercise, or
- (c) any enactment, in the successful bidder’s capacity as holder of the relevant licence or party to the relevant contract;”;

- (b) omit the definitions of “co-ordination licence” and “relevant place”;
- (c) omit the definition of “operational purposes”;
- (d) for the definition of “successful bidder” substitute—

““successful bidder”, in relation to a tender exercise, has the meaning given by section 6CD(6);”;

- (e) for the definition of “tender exercise” substitute—

““tender exercise” has the meaning given by section 6CD(3);”.

25 (1) In Schedule 4 (powers of licence holders), paragraph 6 is amended as follows.

(2) In sub-paragraph (1)—

- (a) in paragraph (a), after “licence holder” insert “to obtain the right”;
- (b) omit “for the licence holder”.

(3) After sub-paragraph (7) insert—

“(7A) A necessary wayleave granted to a licence holder under this paragraph may be transferred to another licence holder.”

## PART 2

### OTHER AMENDMENTS

#### *Utilities Act 2000*

26 (1) Section 105 of the Utilities Act 2000 (general restrictions on disclosure of information) is amended as follows.

(2) In subsection (3), after paragraph (ac) insert—

“(ad) it is made for the purpose of facilitating any functions of the Authority, a delivery body or a contract counterparty (within the meaning of Part 1 of the 1989 Act) under regulations under section 6C of that Act;”.

## SCHEDULE 16

Section 204

## MERGERS OF ENERGY NETWORK ENTERPRISES

## PART 1

## FURTHER DUTIES OF COMPETITION AND MARKETS AUTHORITY TO MAKE REFERENCES

- 1 Part 3 of the Enterprise Act 2002 (mergers) is amended as follows.
- 2 After section 68 insert –

*“Mergers of energy network enterprises in Great Britain*

**68A Relevant merger situations involving energy network mergers**

- (1) For the purposes of this Part, a relevant merger situation involves an energy network merger if two or more of the enterprises that cease to be distinct are energy network enterprises of the same type.
- (2) For the purposes of this Part, the types of “energy network enterprise” are –
  - (a) an enterprise holding a licence under section 7 of the Gas Act 1986 (gas transporter);
  - (b) an enterprise holding a licence under section 6(1)(b) of the Electricity Act 1989 (transmission of electricity), except as mentioned in subsection (3);
  - (c) an enterprise holding a licence under section 6(1)(c) of the Electricity Act 1989 (distribution of electricity), except as mentioned in subsection (3).
- (3) An enterprise holding a licence under section 6(1)(b) or (c) of the Electricity Act 1989 is not an energy network enterprise if –
  - (a) the licence was granted following a tender exercise, and
  - (b) either –
    - (i) the enterprise does not hold any other licence of a type mentioned in subsection (2), or
    - (ii) the enterprise holds one or more other licences under section 6(1)(b) or (c) of the Electricity Act 1989 and each of those other licences was granted following a tender exercise.
- (4) The Secretary of State may by regulations amend this section by –
  - (a) adding to subsection (2) an enterprise holding a licence under the Gas Act 1986 or the Electricity Act 1989 of a type that is not specified in that subsection;
  - (b) creating an exception in relation to a type of enterprise specified in subsection (2);

- (c) amending or removing an exception that applies in relation to a type of enterprise specified in subsection (2).
- (5) Before making regulations under subsection (4), the Secretary of State must consult—
  - (a) the Gas and Electricity Markets Authority, and
  - (b) the CMA.
- (6) In this section, “tender exercise” has the same meaning as in section 6CD of the Electricity Act 1989.

**68B Further duty to make references in relation to completed mergers**

- (1) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes that it is or may be the case that—
  - (a) a relevant merger situation involving an energy network merger has been created, and
  - (b) the creation of that situation has caused, or may be expected to cause, substantial prejudice to the ability of the Gas and Electricity Markets Authority, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the energy network merger;but this is subject to subsections (2) and (3).
- (2) The CMA may decide not to make a reference under this section if it believes that any relevant customer benefits in relation to the creation of the relevant merger situation outweigh the prejudice mentioned in subsection (1)(b).
- (3) The CMA must not make a reference under this section in any circumstances described in section 22(3).
- (4) A reference under this section must, in particular, specify—
  - (a) the enactment under which it is made, and
  - (b) the date on which it is made.

**68C Further duty to make references in relation to anticipated mergers**

- (1) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes that it is or may be the case that—
  - (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation involving an energy network merger, and

- (b) the creation of that situation may be expected to cause substantial prejudice to the ability of the Gas and Electricity Markets Authority, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the energy network merger, but this is subject to subsections (2) and (3).
- (2) The CMA may decide not to make a reference under this section if it believes that—
- (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference, or
- (b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the prejudice mentioned in subsection (1)(b).
- (3) The CMA must not make a reference under this section in any circumstances described in section 33(3).
- (4) A reference under this section must, in particular, specify—
- (a) the enactment under which it is made, and
- (b) the date on which it is made.

#### **68D Opinion of the Gas and Electricity Markets Authority**

- (1) Before forming a view for the purposes of section 68B(1)(b) or (2) or 68C(1)(b) or (2)(b), the CMA must—
- (a) ask the Gas and Electricity Markets Authority to give an opinion, and
- (b) consider that opinion.
- (2) Where the CMA makes a request under this section, the Gas and Electricity Markets Authority must give its opinion on—
- (a) whether and to what extent the creation of the relevant merger situation has prejudiced, or may be expected to prejudice, the Authority's ability, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the relevant merger situation, and
- (b) whether any prejudice is outweighed by any relevant customer benefits in relation to the creation of the relevant merger situation.
- (3) The Gas and Electricity Markets Authority must prepare and publish a statement of the methods it considers should be applied in forming an opinion on the matters mentioned in subsection (2).

- (4) The statement must, in particular, set out –
  - (a) the criteria to be used for assessing the effect of any particular energy network enterprises ceasing to be distinct enterprises on the Gas and Electricity Market Authority’s ability to make comparisons between such enterprises, and
  - (b) the relative weight to be given to the criteria.
- (5) Before preparing or altering the statement, the Gas and Electricity Markets Authority must consult –
  - (a) the Secretary of State,
  - (b) the Scottish Ministers,
  - (c) the Welsh Ministers,
  - (d) the CMA, and
  - (e) each energy network enterprise.
- (6) The Gas and Electricity Markets Authority must from time to time –
  - (a) review the statement, and
  - (b) where appropriate, change the statement and publish the new version.
- (7) In forming its opinion under this section, the Gas and Electricity Markets Authority must apply the methods set out in its latest statement.

#### **68E Combined references**

- (1) In respect of a relevant merger situation involving an energy network merger, the CMA may –
  - (a) make a reference under both section 22 and section 68B, or
  - (b) make a reference under both section 33 and section 68C.
- (2) If the CMA does so –
  - (a) the references may be decided by the same group constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013;
  - (b) the functions of the CMA referred to in section 34C(1) and (2) may be carried out on behalf of the CMA by the same group in relation to both references; and
  - (c) the group’s duties under section 38 to prepare and publish a report on each reference may be satisfied by preparing and publishing a single report on both references.

#### **68F Modification of this Part**

- (1) In relation to –
  - (a) a reference, or possible reference, under section 68B, and
  - (b) a reference, or possible reference, under section 68C,

Chapter 1 of this Part applies with the modifications set out in Schedule 5A.

- (2) In Chapters 2 to 5 of this Part, references to a provision of Chapter 1 include that provision as applied by subsection (1) and Schedule 5A.”

3 After Schedule 5 insert –

“SCHEDULE 5A

Section 68F

ENERGY NETWORK MERGERS AFFECTING COMPARATIVE REGULATION:  
MODIFICATION OF CHAPTER 1 OF PART 3

*General modifications*

- 1 (1) Chapter 1 (other than sections 22 and 33) has effect as if –
- (a) references to a reference or possible reference under section 22 were references to a reference or possible reference under section 68B, and
  - (b) references to a reference or possible reference under section 33 were references to a reference or possible reference under section 68C.
- (2) The references in sub-paragraph (1) to a reference under a section include a reference treated as made under that section.

*Turnover*

- 2 Section 23 (relevant merger situations) has effect as if –
- (a) in subsection (1), for paragraph (b) there were substituted –
    - “(b) the value of the turnover in Great Britain of the enterprise being taken over exceeds £70 million.”;
  - (b) subsections (2) to (8) were omitted.
- 3 Section 28 (turnover test) has effect as if –
- (a) references to the United Kingdom were to Great Britain;
  - (b) in subsection (5), for “The CMA shall” there were substituted “The CMA and the Gas and Electricity Markets Authority shall each”;
  - (c) the reference in subsection (6) to section 23(1)(b) included a reference to that provision as modified by paragraph 2 of this Schedule.

*Relevant customer benefits*

- 4 Section 30 (relevant customer benefits) has effect as if –

- (a) in subsection (1)(a)(i), for “lessening of competition concerned” there were substituted “prejudice to the Gas and Electricity Markets Authority”;
- (b) in subsections (2)(b) and (3)(b), for “a similar lessening of competition” there were substituted “a similar prejudice to the Gas and Electricity Markets Authority”.

*Time limits for decisions about references*

- 5 Section 34ZA(1)(a) (time-limits for decisions about references) has effect as if—
- (a) the reference to section 22(2) were to section 68B(2);
  - (b) the reference to section 22(3) were to—
    - (i) that provision as applied by section 68B(4), and
    - (ii) section 68B(3);
  - (c) the reference to section 33(2) were to section 68C(2);
  - (d) the reference to section 33(3) were to—
    - (i) that provision as applied by section 68C(4), and
    - (ii) section 68C(3).

*Questions to be decided in relation to completed mergers*

- 6 Section 35 (questions to be decided in relation to completed mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”;
  - (b) in subsection (1)(b), for the words from “has resulted” to the end there were substituted “has caused, or may be expected to cause, substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”;
  - (c) for subsection (2) there were substituted—
    - “(2) For the purposes of this section there is a prejudicial outcome if there is a situation described in subsection (1)(a) which has, or may be expected to have, the effect described in subsection (1)(b).”;
  - (d) in subsection (3), for “an anti-competitive outcome (within the meaning given by subsection (2)(a))” there were substituted “a prejudicial outcome”;
  - (e) in subsections (3)(a) and (b) and (4), for “lessening of competition” (in each place it appears) there were substituted “prejudice”.

*Questions to be decided in relation to anticipated mergers*

- 7 Section 36 (questions to be decided in relation to anticipated mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”;
  - (b) in subsection (1)(b), for the words from “result” to the end there were substituted “cause substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”;
  - (c) after subsection (1) there were inserted—
    - “(1A) For the purposes of this section there is a prejudicial outcome if there are arrangements described in subsection (1)(a) which may be expected to have the effect described in subsection (1)(b).”;
  - (d) in subsection (2), for “an anti-competitive outcome (within the meaning given by section 35(2)(b))” there were substituted “a prejudicial outcome”;
  - (e) in subsections (2)(a) and (b) and (3), for “lessening of competition” (in each place it appears) there were substituted “prejudice”.

*Duty to remedy effects of completed or anticipated mergers*

- 8 Section 41 (duty to remedy effects of completed or anticipated mergers) has effect as if—
- (a) in subsection (1), for “an anti-competitive outcome” there were substituted “a prejudicial outcome (within the meaning of section 35(2) or 36(1A))”;
  - (b) in subsection (2)(a) and (b), for “lessening of competition” there were substituted “prejudice”;
  - (c) in subsection (4), for “lessening of competition” there were substituted “prejudice”.

**PART 2**

CONSEQUENTIAL AMENDMENTS OF PART 3 OF ENTERPRISE ACT 2002

- 4 Part 3 of the Enterprise Act 2002 is amended as follows.
- 5 (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows.
- (2) In subsection (3)(c), after “section 33” insert “or 68B or 68C”.
  - (3) In subsection (7)(a), after “section 33” insert “, 68B or 68C”.



- 6 In section 33(3)(c) (circumstances in which references in relation to anticipated mergers may not be made), after “section 22” insert “or 68B or 68C”.
- 7 (1) Section 42 (intervention by Secretary of State in certain public interest cases) is amended as follows.
- (2) In subsection (1)(b), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (1)(c), after “33” insert “or subsection (2)(a) of section 68C”.
- (4) In subsection (1)(d) –
- (a) for “section 22 or 33” substitute “section 22, 33, 68B or 68C”;
- (b) in sub-paragraph (1), after the second “or (a)” insert “(including those provisions as applied by sections 68B and 68C)”.
- 8 In section 56(2) (competition cases where intervention on public interest grounds ceases), for “or 33” (in both places it occurs) substitute “, 33, 68B or 68C”.
- 9 In section 57(1) (duties of CMA and OFCOM to inform Secretary of State), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- 10 In the italic heading at the beginning of Chapter 4, for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- 11 (1) Section 72 (initial enforcement orders: completed or anticipated mergers) is amended as follows.
- (2) In subsection (1)(a), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (6)(a) and (d), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- 12 (1) Section 73 (undertakings in lieu of references) is amended as follows.
- (2) In the heading, for “22 or 33” substitute “22, 33, 68B or 68C”.
- (3) After subsection (3) insert –
- “(3A) Subsection (3B) applies if the CMA considers that it is under a duty to make a reference under section 68B or 68C; and for the purposes of this subsection it must –
- (a) disregard the operation of section 22(3)(b) or 33(3)(b) (as applied by section 68B or 68C), but
- (b) take account of its power under section 68B(2) or 68C(2) to decide not to make such a reference.
- (3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), accept from such of the parties concerned

as it considers appropriate undertakings to take such action as it considers appropriate.

- (3C) In proceeding under subsection (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudice.
- (3D) Before proceeding under subsection (3B), the CMA must –
- (a) ask the Gas and Electricity Markets Authority to give its opinion on the effect of the undertakings offered, and
  - (b) consider the Authority’s opinion.”
- (4) In subsection (4), after “subsection (2)” insert “or (3B)”.
- 13 (1) Section 73A (time-limits for consideration of undertakings) is amended as follows.
- (2) In subsection (1), after “73(2)” insert “or (3B)”.
  - (3) In subsection (2), for “those purposes” substitute “the purposes of section 73(2) or (3B)”.
- 14 (1) Section 74 (effect of undertakings under section 73) is amended as follows.
- (2) In subsection (1), for “or 45” substitute “, 45, 68B or 68C”.
  - (3) In subsection (5)(a), for “or 33” substitute “, 33, 68B or 68C”.
- 15 In section 77(1)(a) (restrictions on certain dealings: completed mergers), after “22” insert “or 68B”.
- 16 In section 78(1)(a) (restrictions on certain share dealings: anticipated mergers), after “33” insert “or 68C”.
- 17 In section 79(1) and (2) (sections 77 and 78: further interpretation provisions), for “or 33” substitute “, 33, 68B or 68C”.
- 18 In section 80(1), (7) and (8) (interim undertakings), for “or 33” substitute “, 33, 68B or 68C”.
- 19 In section 81(1), (7) and (8) (interim orders), for “or 33” substitute “, 33, 68B or 68C”.
- 20 In section 82(3) and (4) (final undertakings), for “or 33” substitute “, 33, 68B or 68C”.
- 21 In section 84(5) (final orders), for “or 33” substitute “, 33, 68B or 68C”.
- 22 (1) Section 100 (exceptions to protection given by merger notices) is amended as follows.
- (2) In subsection (1), for “or (as the case may be) 33” substitute “, 33, 68B or 68C”.
  - (3) In subsection (2)(a), for “or 33” substitute “, 33, 68B or 68C”.

- 23 In section 104(6) (certain duties of relevant authorities to consult), in the definition of “relevant decision”, in paragraph (a)(i), for “or 33” substitute “, 33, 68B or 68C”.
- 24 In section 105(1) (general information duties of CMA), for “or 33” substitute “, 33, 68B or 68C”.
- 25 (1) Section 106 (advice and information about references) is amended as follows.
- (2) In the heading, for “sections 22 and 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (1)(a), for “or 33” substitute “, 33, 68B or 68C”.
- 26 (1) Section 107 (further publicity requirements) is amended as follows.
- (2) In subsection (1)(a), for “or 33” substitute “, 33, 68B or 68C”.
- (3) In subsection (1)(aa), for “subsection (2)(b) of section 33” substitute “section 33(2)(b) or 68C(2)(a)”.
- (4) In subsection (1)(b), for “or 33” substitute “, 33, 68B or 68C”.
- (5) In subsection (2)(a), at the end insert “or 68C”.
- (6) In subsection (2)(b), for the words from “a reference” to the end substitute “a reference under section 22 or 68B as if it had been made under section 33 or 68C or to treat a reference under section 33 or 68C as if it had been made under section 22 or 68B”.
- 27 In section 109(A1)(a) (attendance of witnesses and production of documents etc), for “or 33” substitute “, 33, 68B or 68C”.
- 28 In section 110A(5) and (6) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, 68B or 68C”.
- 29 In section 110B(1) and (2) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, 68B or 68C”.
- 30 In section 121(3)(a) (fees), for “or 33” substitute “, 33, 68B or 68C”.
- 31 In section 124(5) (orders and regulations), at the beginning insert “Regulations made by the Secretary of State under section 68A or”.
- 32 In section 127(3) (associated person), for “or 62” substitute “, 62, 68B or 68C”.
- 33 (1) The table in section 130 (index of defined expressions) is amended as follows.
- (2) After the entry for “Enactment” insert –
- |                            |               |
|----------------------------|---------------|
| “Energy network enterprise | Section 68A   |
| Energy network merger      | Section 68A”. |

- (3) In the entry for “Final determination of reference under section 22 or 33”, for “or 33” substitute “, 33, 68B or 68C”.
  - (4) In the entry for “References under section 22, 33, 45 or 62” –
    - (a) for “or 62” substitute “, 62, 68B or 68C”, and
    - (b) after “37(2)” insert “(including as applied by Schedule 5A)”.
  - (5) In the entry for “The turnover in the United Kingdom of an enterprise”, after “28(2)” insert “(including as applied by Schedule 5A)”.
- 34 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
- (2) In paragraph 4(1), for “or 45” substitute “, 45, 68B or 68C”.
  - (3) In paragraph 4(2)(a), for “or 33” substitute “, 33, 68B or 68C”.

### PART 3

#### CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

##### *Utilities Act 2000*

- 35 In section 105(3) of the Utilities Act 2000 (general restrictions on disclosure of information), in paragraph (azb), after “under” insert “Part 3 of the Enterprise Act 2002 or under”.

##### *Enterprise and Regulatory Reform Act 2013*

- 36 (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 is amended as follows.
- (2) In paragraph 35(3) (membership of CMA panel), in the definition of “specialist utility functions”, after paragraph (d) insert –
    - “(dza) a reference under section 68B or 68C of the Enterprise Act 2002;”.
  - (3) In paragraph 56 (CMA group decision: requirement for two thirds majority), after sub-paragraph (2) insert –
    - “(2A) Sub-paragraph (2B) applies where a decision of a CMA group under section 35(1) or 36(1) of that Act (as applied by section 68F of, and Schedule 5A to, that Act) that there is, or is likely to be, prejudice of the kind described in section 68B(1)(b) or 68C(1)(b) of that Act is not a qualifying majority decision.
    - (2B) The decision of the CMA group is to be treated as a decision under section 35(1) or, as the case may be, section 36(1) of that Act (as applied by section 68F of, and Schedule 5A to, that Act) that there is not, or is not likely to be, prejudice of that kind.”

SCHEDULE 17

Section 210

MULTI-PURPOSE INTERCONNECTORS: CONSEQUENTIAL AMENDMENTS

*The Electricity Act 1989*

- 1 The Electricity Act 1989 is amended as follows.
- 2 In section 3A (principal objective and general duties of Secretary of State and Gas and Electricity Markets Authority) –
  - (a) in subsection (1B), after “interconnectors” insert “or multi-purpose interconnectors”;
  - (b) in subsection (5)(a), after “interconnectors” insert “or multi-purpose interconnectors”;
  - (c) in subsection (5B), in the definition of “electricity-supply emissions”, after “interconnectors” insert “or multi-purpose interconnectors”.
- 3 In section 3F(2) (Gas and Electricity Markets Authority to cooperate with Northern Ireland Authority), after “interconnection” insert “and multi-purpose interconnection”.
- 4 In section 7 (conditions of licences: general) –
  - (a) in subsection (2), after “distribution licence” insert “or MPI licence”;
  - (b) in subsection (2A), after “transmission licence” insert “or MPI licence”.
- 5 In section 29 (regulations relating to supply and safety) –
  - (a) in subsection (1)(b), after “interconnectors” insert “or multi-purpose interconnectors”;
  - (b) in subsection (2) –
    - (i) in paragraph (b), after “interconnectors” insert “or multi-purpose interconnectors”;
    - (ii) in paragraph (c), after “interconnector” insert “or multi-purpose interconnector”.
- 6 In section 30 (electrical inspectors), in subsection (2)(a), after “interconnectors” insert “or multi-purpose interconnectors”.
- 7 In section 43 (functions with respect to competition) –
  - (a) in subsection (2A)(b), after “interconnectors” insert “or multi-purpose interconnectors”;
  - (b) in subsection (2C)(b), after “interconnectors” insert “or multi-purpose interconnectors”;
  - (c) in subsection (3), after “interconnectors” insert “or multi-purpose interconnectors”.
- 8 In subsection 44B (meaning of “section 44B dispute”), in subsection (1)(a), after sub-paragraph (iii) insert –
  - “(iia) made against the holder of an MPI licence”.

- 9 In section 56A(4) (scope of power to alter activities requiring licence), after “electricity” insert “, with the operation of a multi-purpose interconnector”.
- 10 In section 58(2) (direction restricting the use of certain information), after “interconnectors” insert “or multi-purpose interconnectors”.
- 11 In section 98(1) (provision of statistical information), after “interconnectors” insert “or multi-purpose interconnectors”.

*Scotland Act 1998*

- 12 In section 90B of the Scotland Act 1998 (the Crown Estate), in subsection (12)(d), after “interconnectors” insert “or multi-purpose interconnectors (within the meaning of Part 1 of the Electricity Act 1989)”.

*Utilities Act 2000*

- 13 In section 5A of the Utilities Act 2000 (duty of Authority to carry out impact assessment), in subsection (2) –
- (a) in paragraph (b), after “gas meters)” insert “or in the operation of a multi-purpose interconnector”;
  - (b) in paragraph (c), after “electricity” insert “or the operation of a multi-purpose interconnector”.

*Energy Act 2004*

- 14 Section 172 of the Energy Act 2004 (annual report on security of energy supplies) is amended as follows –
- (a) in subsection (2D)(b), after “interconnectors” insert “and multi-purpose interconnectors”;
  - (b) in subsection (4), after ““generation”,” insert “, “multi-purpose interconnector”,”.

*Civil Contingencies Act 2004*

- 15 (1) Schedule 1 to the Civil Contingencies Act 2004 (category 1 and 2 responders) is amended as follows.
- (2) In paragraph 19, in sub-paragraph (2) –
    - (a) omit the “and” after paragraph (b);
    - (b) after paragraph (c) insert “, and
    - (d) an MPI licence.”
  - (3) In paragraph 30, in sub-paragraph (2) –
    - (a) omit the “and” after paragraph (b);
    - (b) after paragraph (c) insert “, and
    - (d) an MPI licence.”

*Consumers, Estate Agents and Redress Act 2007*

- 16 In section 42 of the Consumers, Estate Agents and Redress Act 2007 (interpretation of Part 2), in subsection (4), in paragraph (c) of the definition of “electricity licensee” –
- (a) for “or (e)” substitute “, (e) or (ea)”;
  - (b) for “and interconnector licences” substitute “, interconnector licences and MPI licences”.

*Energy Act 2013*

- 17 In section 59 of the Energy Act 2013 (suspension etc of emissions limit in exceptional circumstances), in subsection (4)(a), after “interconnector” insert “or multi-purpose interconnector”.

*Regulation (EU) 2019/943 of the European Parliament and of the Council of 5th June 2019 on the internal market for electricity (recast)*

- 18 In Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5th June 2019 on the internal market for electricity (recast), in paragraph 4A, for “granted under section 6(1)(e) of the Electricity Act 1989” substitute “or an MPI licence granted under section 6(1)(e) or (ea) respectively of the Electricity Act 1989”.

*United Kingdom Internal Market Act 2020*

- 19 In Part 2 of Schedule 2 to the United Kingdom Internal Market Act 2020 (services to which non-discrimination provisions do not apply), in the entry relating to services connected with the supply or production of electricity, after “interconnector” insert “or multi-purpose interconnector”.

SCHEDULE 18

Section 219

HEAT NETWORKS REGULATION

**PART 1**

INTERPRETATION

- 1 In this Schedule –
- “code manager licence” has the meaning given by paragraph 25;
  - “consumer redress order” has the meaning given by paragraph 37;
  - “designated document” has the meaning given by paragraph 22;
  - “emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);
  - “enforcement undertaking” has the meaning given by paragraph 38(2);

“heat network authorisation” has the meaning given by paragraph 13;  
“heat network consumer” has the meaning given by the regulations;  
“installation and maintenance licence” has the meaning given by paragraph 31;  
“licensed code manager”, in relation to a designated document, has the meaning given by paragraph 25;  
“regulated activity” has the meaning given by paragraph 12;  
“the regulations” means regulations under section 219;  
“relevant condition” has the meaning given by paragraph 37;  
“relevant person” has the meaning given by paragraph 37;  
“relevant requirement” has the meaning given by paragraph 37;  
“targeted greenhouse gas” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).

## PART 2

### GENERAL PROVISION AS TO THE REGULATOR

#### *Objectives*

- 2 (1) The regulations may make provision about the objectives of the Regulator in carrying out its functions under the regulations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide that the principal objective of the Regulator is to protect the interests of existing and future heat network consumers.
- (3) The regulations may specify particular interests of existing and future heat network consumers that are to be protected.
- (4) The interests specified may, in particular, include—
  - (a) their interests in the reliability of the supply of heating, cooling or hot water by means of relevant heat networks;
  - (b) their interests in the reduction of emissions of targeted greenhouse gases generated by relevant heat networks;
  - (c) their interests in charges for the supply of heating, cooling or hot water by means of relevant heat networks being proportionate;
  - (d) their interests in information about services and charges being communicated plainly.

#### *General duties*

- 3 (1) The regulations may make provision about the duties of the Regulator in carrying out its functions under the regulations.
- (2) The duties may, in particular, include—
  - (a) a duty to carry out its functions in a manner best calculated to further its objectives;



- (b) a duty to consider, when carrying out its functions, the need to ensure that persons carrying out activities under a heat network authorisation or under an installation and maintenance licence are able to finance obligations imposed by or under the regulations;
    - (c) a duty to have regard to the interests of heat network consumers who are in vulnerable circumstances when performing duties imposed by regulations made by virtue of paragraph (a) or (b).
  - (3) Regulations made by virtue of sub-paragraph (2)(a) may require that the Regulator promote effective competition between persons engaged in, or in commercial activities connected with, the supply of heating, cooling or hot water by means of relevant heat networks.
- 4 (1) The regulations may provide for the Regulator to have regard, in carrying out a function under the regulations, to—
  - (a) the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (within the meaning of the Electricity Act 1989);
  - (b) the interests of existing and future consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);
  - (c) any interests of existing and future consumers in relation to—
    - (i) communications services and electronic communications apparatus, or
    - (ii) water services or sewerage services (within the meaning of the Water Industry Act 1991),which are affected by the carrying out of that function.
- (2) The regulations may provide for persons or bodies exercising regulatory functions in those fields to have regard, in carrying out a regulatory function, to the interests of existing or future consumers in relation to the supply of heating, cooling or hot water by means of relevant heat networks.

#### *Delegation of functions*

- 5 (1) The regulations may provide for the Regulator to delegate functions conferred on the Regulator by the regulations.
- (2) The regulations may specify functions which may be delegated only with the consent of the Secretary of State or, as the case may be, the Department.

#### *Monitoring, records and information*

- 6 (1) The regulations may require the Regulator to keep under review the carrying on of activities connected with heat networks in the part or parts of the United Kingdom in relation to which the Regulator has functions under the regulations.
- (2) The regulations may require the Regulator to monitor such matters relating to the activities regulated by the regulations or the persons who carry on those activities as the regulations may specify.

- (3) The regulations may, for the purposes of enabling the Regulator to perform a duty imposed by regulations made by virtue of sub-paragraph (2), make provision enabling the Regulator to require information to be supplied.
- 7 (1) The regulations may require the Regulator to collect information with respect to activities connected with heat networks and the persons who carry on those activities for such purposes as are specified in the regulations.
- (2) The regulations may, in particular, require the Regulator to collect information relating to standards of performance achieved by –
- (a) persons who hold a heat network authorisation;
  - (b) licensed code managers;
  - (c) persons who hold an installation and maintenance licence.
- 8 (1) The regulations may make provision requiring the Regulator to maintain records.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision requiring the Regulator to maintain records relating to –
- (a) persons whose application for a heat network authorisation, a code manager licence or an installation and maintenance licence has been refused;
  - (b) persons whose heat network authorisation, code manager licence or installation and maintenance licence has been revoked.
- (3) The regulations may make provision enabling or requiring the Regulator to provide information from its records to –
- (a) the Secretary of State or a person specified by the Secretary of State,
  - (b) the Department or a person specified by the Department, or
  - (c) the Scottish Ministers or a person specified by the Scottish Ministers.
- 9 (1) The regulations may make provision restricting the disclosure of information obtained by the Regulator under or by virtue of the regulations, subject to exceptions specified in the regulations.
- (2) The regulations may make provision about the disclosure to the Regulator of information held by other persons or bodies.
- 10 (1) The regulations may make provision for the purpose of securing that a disclosure of information which is authorised or required by the regulations does not contravene the data protection legislation.
- (2) In this paragraph, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

*Other general provision*

- 11 (1) The regulations may make other general provision about the Regulator.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about –
- (a) preparing and publishing documents about –

- (i) strategy and policies;
    - (ii) plans for future work;
  - (b) publishing reports annually;
  - (c) publishing financial information in annual accounts;
  - (d) preparing and publishing impact assessments.
- (3) Regulations made by virtue of sub-paragraph (1) may make provision about preparing, issuing, reviewing and revising guidance.
- (4) Regulations made by virtue of sub-paragraph (1) may provide for the publication of information and advice for the purpose of promoting the interests of existing and future heat network consumers.

### PART 3

#### HEAT NETWORK AUTHORISATIONS

##### *Prohibition from carrying on regulated activity*

- 12 (1) The regulations may prohibit a person from carrying on a regulated activity, except as permitted by virtue of an authorisation conferred under regulations made by virtue of paragraph 13.
- (2) In this paragraph, “regulated activity” means an activity relating to a relevant heat network of such description as may be specified in the regulations.

##### *Heat network authorisations*

- 13 (1) The regulations may provide for the Regulator to confer authorisations (“heat network authorisations”) to carry on one or more regulated activities specified in the authorisation in relation to a particular relevant heat network.
- (2) The regulations may require a person who applies for a heat network authorisation—
- (a) to satisfy such conditions relating to the person, the regulated activity or activities in question or the relevant heat network in question as the regulations may specify, and
  - (b) to provide such information as the regulations may specify.
- (3) The regulations may provide for the Regulator—
- (a) to confer a heat network authorisation;
  - (b) to confer a heat network authorisation on a temporary basis;
  - (c) to refuse to confer a heat network authorisation.
- (4) The regulations may make provision about the procedure for applying for a heat network authorisation, including provision about—
- (a) the form and content of an application,

- (b) the manner in which the application and any accompanying documents are to be submitted to the Regulator;
    - (c) the payment of a fee.
  - (5) Regulations made in relation to England and Wales and Scotland by virtue of sub-paragraph (2)(b) or (4) may provide for the Regulator to make provision by regulations about the matters referred to in that sub-paragraph.
  - (6) Regulations made by the Regulator by virtue of sub-paragraph (5) are to be made by statutory instrument.
  - (7) The regulations may make provision as to the period for which an authorisation may be in force.
- 14 (1) The regulations may make provision about the conditions to be included in heat network authorisations.
- (2) The regulations may, in particular –
    - (a) provide for the Regulator to determine and publish conditions to be included in each heat network authorisation or in each heat network authorisation of a particular description;
    - (b) provide for the Secretary of State or, in relation to Northern Ireland, the Department to determine and publish conditions to be included in each heat network authorisation or in each heat network authorisation of a particular description;
    - (c) provide for consultation on, and publication of, the conditions proposed to be so determined;
    - (d) make provision about the inclusion in a heat network authorisation of conditions that are special to that authorisation;
    - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations.
  - (3) The regulations may, in particular, provide for conditions to be included in a heat network authorisation requiring the person who holds the authorisation –
    - (a) to comply with the provisions of a particular designated document;
    - (b) to enter into governance arrangements with the person who is from time to time the licensed code manager for that designated document and to comply with those arrangements;
    - (c) to provide funding for the person who is from time to time the licensed code manager for that designated document.
  - (4) The regulations may, in particular, provide for the following sorts of conditions to be included in a heat network authorisation –
    - (a) conditions about the terms on which premises are connected to a relevant heat network (whether for the purpose of supplying heating, cooling or hot water to premises, or supplying thermal energy to a relevant heat network);
    - (b) conditions about installing and maintaining equipment for measuring, displaying, recording and regulating consumption of

- heating, cooling and hot water supplied by means of relevant heat networks;
- (c) conditions about—
    - (i) the charges payable by heat network consumers or a description of heat network consumers specified in the regulations,
    - (ii) the billing of heat network consumers;
    - (iii) service standards, or
    - (iv) the communication of information about the heat network, the services provided or the terms on which the services are provided;
  - (d) conditions relating to price regulation (including by means of regulation of charges or profits);
  - (e) conditions about complying with technical standards (including, in relation to England and Wales and Scotland, technical standards for which provision is made in a designated document);
  - (f) conditions about ensuring the continuity of the supply of heating, cooling and hot water to heat network consumers;
  - (g) conditions about limiting emissions of targeted greenhouse gases in relation to relevant heat networks in England or Northern Ireland;
  - (h) conditions about providing information to the Regulator;
  - (i) conditions about the payment of fees to the Regulator, including conditions about the payment of fees—
    - (i) in connection with the conferring of an authorisation;
    - (ii) while an authorisation continues to be in force in relation to a person;
  - (j) conditions about making payments to the Regulator of sums relating to the costs of the Regulator under regulations made by virtue of paragraph 46(2).
- (5) Conditions of the sort referred to in sub-paragraph (4)(c)(i) may, in particular—
- (a) provide for charges imposed on heat network consumers to be subject to a price cap;
  - (b) require a person who holds a heat network authorisation not to impose on heat network consumers charges that are disproportionate (see paragraph 42).
- (6) Conditions of the sort referred to in sub-paragraph (4)(c)(ii) may, in particular—
- (a) impose requirements about the bills given to heat network consumers (including requirements about their frequency, accuracy and the use of estimates);
  - (b) impose requirements about the information and explanatory material to be provided to heat network consumers;

- (c) make provision about the charges that may be made in respect of the costs of providing bills and such information and explanatory material.
- (7) The regulations may, in particular, provide for conditions to be included in a heat network authorisation that—
- (a) in relation to England and Wales or Scotland, impose on the person who holds the authorisation a requirement of a kind that may be imposed under section 7(3) of the Electricity Act 1989 on the holder of a licence under section 6(1) of that Act;
  - (b) in relation to Northern Ireland, impose on the person who holds the authorisation a requirement of a kind that may be imposed under Article 11(3) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) on the holder of a licence under Article 10(1) of that Order.

*Conditions about technical standards: further provision*

- 15 The technical standards for which regulations made by virtue of paragraph 14(4)(e) may make provision include technical standards relating to—
- (a) the design, construction, commissioning, operation or maintenance of a heat network;
  - (b) the decommissioning of a heat network;
  - (c) equipment or materials used in the construction, operation or maintenance of a heat network;
  - (d) the competence of persons engaged in the design, construction, commissioning, operation or maintenance of a heat network.

*Conditions about continuity of supply: further provision*

- 16 Conditions of the sort referred to in paragraph 14(4)(f) may, in particular, require the holder of a heat network authorisation to enter into and maintain contractual arrangements under which, in circumstances of a description specified in the conditions, one or more other persons are under an obligation to secure the continuity of the supply of heating, cooling or hot water.
- 17 Conditions of the sort referred to in paragraph 14(4)(f) may, in particular, require the holder of a heat network authorisation, when directed to do so by the Regulator in circumstances of a description specified in the conditions, to carry on a regulated activity in relation to a relevant heat network in the place of another person (see paragraph 44).

*Modification of heat network authorisations*

- 18 (1) The regulations may provide for the modification by the Regulator of—
- (a) the conditions of a particular heat network authorisation;

- (b) conditions that are included in two or more heat network authorisations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
  - (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification;
  - (b) provide for the communication of any modification;
  - (c) provide for the time when any modification takes effect;
  - (d) provide for the Regulator to comply with a direction of the Secretary of State or, in relation to Northern Ireland, the Department not to make a particular modification.
- (3) In sub-paragraphs (1) and (2), a reference to the modification of a condition includes a reference to the revocation of a condition.
- (4) The regulations may provide for the conditions of a heat network authorisation –
  - (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions;
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.

*Review and revocation of heat network authorisations*

- 19 The regulations may provide for the conditions of, or the activities carried out by virtue of, a heat network authorisation to be reviewed by the Regulator at any time while it is in force.
- 20 (1) The regulations may provide –
  - (a) for the revocation of a heat network authorisation by the Regulator;
  - (b) for a heat network authorisation to cease to have effect in circumstances specified in or determined under the authorisation.
- (2) Regulations made by virtue of sub-paragraph (1)(a) may, in particular, provide for the procedure to be followed by the Regulator when it proposes to revoke the authorisation.

*Initial period*

- 21 (1) The regulations may make provision with respect to persons carrying on a regulated activity in relation to a relevant heat network during a period that –
  - (a) begins with the day on which any regulations made by virtue of paragraph 12 come into force, and
  - (b) ends with a day specified in the regulations.
- (2) The regulations may –
  - (a) provide for the period to be prolonged, or to be prolonged as it relates to a description of heat network authorisations, by the Regulator;

- (b) require the consent of the Secretary of State or the Department (as the case may be) to such an alteration.
- (3) Regulations made by virtue of sub-paragraph (1) may –
- (a) provide for a person carrying on a regulated activity in relation to a relevant heat network to be treated as holding a heat network authorisation in relation to that activity and that relevant heat network during the period described in sub-paragraph (1) (or, if applicable, during that period as prolonged by virtue of sub-paragraph (2));
  - (b) make provision as to the conditions of the heat network authorisation treated as conferred on such a person (including provision similar to the provision described in paragraph 14(2));
  - (c) require a person carrying on a regulated activity in relation to a relevant heat network to apply to the Regulator for a heat network authorisation to be conferred on the person by a time specified in or determined under the regulations.
- (4) Regulations made by virtue of sub-paragraph (3)(c) may provide for different times for different descriptions of case.

#### PART 4

##### CODE GOVERNANCE

###### *Designated documents*

- 22 (1) In this Part, “designated document” means a document that –
- (a) is maintained in accordance with the conditions of a code manager licence, and
  - (b) is designated for the purposes of this Part by or in accordance with the regulations.
- (2) The regulations may –
- (a) designate or provide for the designation of different documents for different purposes;
  - (b) provide for the time from which a designation has effect;
  - (c) provide for the modification of a designated document and its reissuing in its modified form;
  - (d) revoke or provide for the revocation of a designated document;
  - (e) provide for a designated document otherwise ceasing to be a designated document.
- (3) The regulations may provide for a document that is designated to make provision by reference to material (including standards, specifications or requirements) contained in other documents that are published from time to time.



- (4) The regulations may, in particular, make provision about the cases in which the designated document may be modified by the Regulator.

*Prohibition on performing the function of a code manager*

- 23 (1) The regulations may, in relation to England and Wales and Scotland, prohibit a person from performing the function of code manager in relation to a designated document, except as permitted by virtue of a code manager licence (see paragraph 25).
- (2) A reference in this Part to a person performing the function of code manager in relation to a designated document is a reference to a person making arrangements, with persons to whom sub-paragraph (3) applies, under which the person is responsible for the governance of the designated document.
- (3) This sub-paragraph applies to the person who holds a heat network authorisation where a condition of the authorisation requires the person to comply with the designated document in question.

*Licensed code managers*

- 24 (1) The regulations may, in relation to England and Wales and Scotland, make provision about selecting a person to be a code manager in relation to a designated document.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about the procedure for selecting a person, including provision for determining which procedure to apply in a particular case.
- (3) Regulations made by virtue of sub-paragraph (2) may include provision for the payment of a fee by a person seeking to be selected to be a code manager.
- (4) Regulations made by virtue of sub-paragraph (2) may provide for the Regulator to make provision by regulations about those matters.
- (5) Regulations made by the Regulator by virtue of sub-paragraph (4) are to be made by statutory instrument.
- 25 (1) The regulations may, in relation to England and Wales and Scotland, provide for the Regulator, where a person is selected to be the code manager in relation to a designated document, to issue a licence (a “code manager licence”) to the person which authorises the person to perform the function of code manager in relation to the designated document.
- (2) The regulations may make provision as to the period for which a licence may be in force.
- (3) In this Part, references to the licensed code manager, in relation to a designated document, are references to the person who is authorised by a code manager licence to perform the function of code manager in relation to the designated document.

- 26 (1) The regulations may make provision about the contents of a code manager licence.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
- (a) provide for the Regulator to determine and publish conditions to be included in each code manager licence or in each code manager licence of a particular description;
  - (b) provide for the Secretary of State to determine and publish conditions to be included in each code manager licence or in each code manager licence of a particular description;
  - (c) provide for consultation on, and publication of, the conditions proposed to be so determined;
  - (d) make provision about the inclusion in a code manager licence of conditions that are special to that licence;
  - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the following sorts of conditions to be included in a code manager licence –
- (a) conditions about the nature of the governance arrangements that the licensed code manager may enter into with persons who hold a heat network authorisation (see paragraph 14(3)(b));
  - (b) conditions about the content of those governance arrangements, which may include provision about the licensed code manager –
    - (i) modifying the designated document,
    - (ii) monitoring or enforcing compliance with the provisions of the designated document, or
    - (iii) developing guidance relating to the designated document;
  - (c) conditions about functions of the Regulator in connection with the modification of a designated document;
  - (d) conditions about providing information to the Regulator;
  - (e) conditions about complying with directions of the Regulator as to matters specified or of a description specified in the code manager licence;
  - (f) conditions about the payment of fees to the Regulator, including conditions about the payment of fees –
    - (i) when a code manager licence is first issued;
    - (ii) while a code manager licence continues to be in force in relation to a person.
- (4) The regulations may, in particular, provide for conditions to be included in a code manager licence that –
- (a) in relation to England and Wales or Scotland, impose on the person who holds the licence a requirement of a kind that may be imposed

- under section 7(3) of the Electricity Act 1989 on the holder of a licence under section 6(1) of that Act;
- (b) in relation to Northern Ireland, impose on the person who holds the licence a requirement of a kind that may be imposed under Article 11(3) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) on the holder of a licence under Article 10(1) of that Order.
- 27 The regulations may provide for the Regulator to make payments to licensed code managers in respect of their costs.
- 28 (1) The regulations may provide for the modification by the Regulator of—
- (a) the conditions of a particular code manager licence;
  - (b) conditions that are included in two or more code manager licences.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular—
- (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification;
  - (b) provide for the communication of any modification;
  - (c) provide for the time when any modification takes effect;
  - (d) provide for the Regulator to comply with a direction of the Secretary of State not to make a particular modification.
- (3) In sub-paragraphs (1) and (2), a reference to the modification of a condition includes a reference to the revocation of a condition.
- (4) The regulations may provide for the conditions of a code manager licence—
- (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions;
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.

*Review and revocation of code manager licences*

- 29 The regulations may provide for a code manager licence, or the activities carried out by virtue of a code manager licence, to be reviewed by the Regulator at any time while it is in force.
- 30 (1) The regulations may provide—
- (a) for the revocation of a code manager licence by the Regulator;
  - (b) for a code manager licence to cease to have effect in circumstances specified in or determined under the licence.
- (2) Regulations made by virtue of sub-paragraph (1)(a) may provide for the procedure to be followed by the Regulator when it proposes to revoke the licence.

## PART 5

### INSTALLATION AND MAINTENANCE LICENCES

#### *Installation and maintenance licences*

- 31 (1) The regulations may provide for the issuing of licences (“installation and maintenance licences”) which authorise the holder of a licence to exercise the rights specified in the licence for purposes relating to the installation or maintenance of relevant heat networks—
- (a) in England and Wales, or
  - (b) in Northern Ireland.
- (2) The regulations may require the Regulator to be satisfied before issuing an installation and maintenance licence to a person that the person is an appropriate person to hold such a licence.
- (3) The regulations may require the Regulator, in deciding whether a person is an appropriate person to hold an installation and maintenance licence, to consider such matters as may be specified.
- (4) The matters specified may, in particular, relate to the abilities or financial resources of the person applying for a licence or the nature of the business carried on by the person.
- (5) The regulations may specify other conditions that are to be satisfied before a licence may be issued.
- (6) The regulations may make provision about the procedure for applying for a licence, including provision about—
- (a) the form and content of an application,
  - (b) the manner in which the application and any accompanying documents are to be submitted to the Regulator, and
  - (c) the payment of a fee.
- (7) Regulations made by virtue of sub-paragraph (6) may provide for the Regulator to make provision by regulations about the matters referred to in sub-paragraph (6) (including provision about the information that must be provided to the Regulator by a person applying for a licence), so far as relating to England and Wales.
- (8) Regulations made by the Regulator by virtue of sub-paragraph (7) are to be made by statutory instrument.
- (9) The regulations may make provision as to the period for which a licence may be in force.
- (10) The regulations may make provision about the transfer of a licence.

#### *Rights that may be conferred*

- 32 (1) The regulations must set out the rights relating to land that are capable of being conferred on a person by an installation and maintenance licence.

- (2) Regulations made by virtue of sub-paragraph (1) setting out a right may include provision about the restrictions, exceptions or conditions subject to which the right may be exercised.
- (3) The rights set out by regulations made by virtue of sub-paragraph (1) may include—
- (a) a right to apply to the Secretary of State or, in relation to Northern Ireland, the Department for authority to make a compulsory acquisition of an easement or other right over land by the creation of a new right for the purpose of installing or maintaining works and apparatus relating to a heat network;
  - (b) a right—
    - (i) to install and keep works and apparatus relating to a heat network in, under or over a street,
    - (ii) to inspect, maintain, adjust, alter, repair, upgrade, operate or remove such works and apparatus, and
    - (iii) to carry out such other works as are required for or incidental to those works,subject to such requirements as to notification, manner of working and compensation as may be specified in the regulations;
  - (c) a right—
    - (i) to install and keep works and apparatus relating to a heat network in, under or over transport land,
    - (ii) to inspect, maintain, alter, repair, replace and remove such works and apparatus,
    - (iii) to carry out any works on the transport land for or in connection with the exercise of a right described in sub-paragraph (i) or (ii), and
    - (iv) to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade, operate or remove the works or apparatus, subject to such requirements as to notification, compensation, arbitration and alteration of the works and apparatus as may be specified in the regulations;
  - (d) a right to undertake works of a specified description without being required to obtain planning permission.
- (4) In this paragraph—
- “street” means a street in England, Wales or Northern Ireland and—
    - (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991;
    - (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19));
  - “transport land” means land which is used wholly or mainly—
    - (a) as a railway, tramway or waterway, or

- (b) in connection with a railway, tramway or waterway on the land.

*Further provision about installation and maintenance licences*

- 33 (1) The regulations may make provision about the contents of installation and maintenance licences.
  - (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
    - (a) provide for the Regulator to determine and publish conditions to be included in each installation and maintenance licence or in each installation and maintenance licence of a particular description;
    - (b) provide for the Secretary of State or, in relation to Northern Ireland, the Department to determine and publish conditions to be included in each installation and maintenance licence or in each installation and maintenance licence of a particular description;
    - (c) provide for consultation on, and publication of, the conditions proposed to be so determined;
    - (d) make provision about the inclusion in an installation and maintenance licence of conditions that are special to that licence;
    - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations.
  - (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the following sorts of conditions to be included in a licence –
    - (a) conditions about providing information to the Regulator;
    - (b) conditions about the payment of fees to the Regulator, including conditions about the payment of fees –
      - (i) when a licence is first issued;
      - (ii) while a licence continues to be in force in relation to a person.
  - (4) The regulations may, in particular, provide for conditions to be included in an installation and maintenance licence that –
    - (a) in relation to England and Wales, impose on the person who holds the licence a requirement of a kind that may be imposed under section 7(3) of the Electricity Act 1989 on the holder of a licence under section 6(1) of that Act;
    - (b) in relation to Northern Ireland, impose on the person who holds the licence a requirement of a kind that may be imposed under Article 11(3) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) on the holder of a licence under Article 10(1) of that Order.
- 34 (1) The regulations may provide for the modification by the Regulator of –
    - (a) the conditions of a particular installation and maintenance licence;
    - (b) conditions that are included in two or more installation and maintenance licences.

- (2) Regulations made by virtue of sub-paragraph (1) may, in particular—
  - (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification;
  - (b) provide for the communication of any modification;
  - (c) provide for the time when any modification takes effect;
  - (d) provide for the Regulator to comply with a direction of the Secretary of State or, in relation to Northern Ireland, the Department not to make a particular modification.
- (3) In sub-paragraphs (1) and (2), a reference to the modification of a condition includes a reference to the revocation of a condition.
- (4) The regulations may provide for the conditions of an installation and maintenance licence—
  - (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions;
  - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.

#### *Review and revocation of installation and maintenance licences*

- 35 The regulations may provide for the conditions of, or the activities carried out by virtue of, an installation and maintenance licence to be reviewed by the Regulator at any time while it is in force.
- 36 (1) The regulations may provide—
  - (a) for the revocation of an installation and maintenance licence by the Regulator;
  - (b) for an installation and maintenance licence to cease to have effect in circumstances specified in or determined under the licence.
- (2) Regulations made by virtue of sub-paragraph (1)(a) may, in particular, provide for the procedure to be followed by the Regulator when it proposes to revoke the licence.

## **PART 6**

### ENFORCEMENT OF CONDITIONS AND REQUIREMENTS

#### *Methods of enforcement*

- 37 (1) The regulations may make provision about the enforcement of relevant conditions or relevant requirements.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the Regulator—
  - (a) in a case where the Regulator is satisfied that a relevant person is contravening or is likely to contravene a relevant condition or requirement, to make a final order requiring the person to take such steps as the Regulator considers appropriate for the purpose of

- securing the person’s compliance with the relevant condition or requirement;
- (b) in a case where it appears to the Regulator that a relevant person is contravening or is likely to contravene a relevant condition or requirement, to make a provisional order requiring the person to take such steps as the Regulator considers appropriate for the purpose of securing compliance with the relevant condition or requirement;
  - (c) to impose a penalty on a relevant person for the contravention of a relevant condition or requirement;
  - (d) in relation to England and Wales and Scotland, in a case where the contravention of a relevant condition or requirement by a relevant person has caused or is causing one or more consumers to suffer loss or damage or to be caused inconvenience, to make an order (a “consumer redress order”) requiring the person to do such things as appear to the Regulator necessary for the purposes of—
    - (i) remedying the consequences of the contravention, or
    - (ii) preventing the person contravening the relevant condition or requirement again in the same or a similar way.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for—
- (a) the making of an order,
  - (b) the imposition of a penalty, or
  - (c) the making of a consumer redress order,
- to be excluded if the Regulator considers that it would be more appropriate to proceed under the Competition Act 1998 (see paragraph 41).
- (4) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about the use of more than one method of enforcement.
- (5) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about enforcement in a case where a person who holds two or more heat network authorisations has contravened or is likely to contravene a relevant condition or requirement in those, or some of those, heat network authorisations.
- (6) In this paragraph—
- “relevant condition” means a condition of—
    - (a) a heat network authorisation,
    - (b) a code manager licence, or
    - (c) an installation and maintenance licence;
  - “relevant person” means—
    - (a) a person who holds a heat network authorisation,
    - (b) a licensed code manager, or
    - (c) a person who holds an installation and maintenance licence;



“relevant requirement”, in relation to a relevant person, means a requirement imposed on the person by or under the regulations or by regulations made by the Regulator by virtue of any provision of this Schedule.

#### *Final and provisional orders*

- 38 (1) Regulations made by virtue of paragraph 37(2) may, in particular—
- (a) provide for the confirmation of a provisional order;
  - (b) make provision about procedure;
  - (c) provide for the grounds on which an order may be challenged in legal proceedings, the time within which it may be challenged and the remedies that may be given;
  - (d) specify how an order may be enforced (including by providing for non-compliance with an order to be a breach of duty);
  - (e) make provision enabling the Regulator to accept an enforcement undertaking from a relevant person and about the consequences of accepting such an undertaking.
- (2) An “enforcement undertaking” is an undertaking to take, within the period specified in the undertaking, such action as may be so specified to secure compliance with a relevant condition or requirement.
- (3) Except as provided by the regulations, the validity of an order made by virtue of paragraph 37(2)(a) or (b) is not to be questioned in any legal proceedings.

#### *Penalties*

- 39 (1) Regulations made by virtue of paragraph 37(2)(c) may, in particular—
- (a) make provision about the maximum amount that may be imposed by way of penalty;
  - (b) make provision about procedure;
  - (c) make provision about the payment of interest;
  - (d) specify how a penalty (and any interest) may be recovered;
  - (e) make provision about payment of a penalty (and any interest) in instalments;
  - (f) require sums received by way of penalty (and interest) to be paid into—
    - (i) the Consolidated Fund, or
    - (ii) in relation to Northern Ireland, the Consolidated Fund of Northern Ireland;
  - (g) make provision enabling the Regulator to accept an enforcement undertaking from a relevant person and about the consequences of accepting such an undertaking.
- (2) The regulations may provide for—

- (a) publication by the Regulator of a statement of policy with respect to the imposition of penalties and the determination of their amount;
  - (b) revision of the statement of policy.
- (3) Where regulations make provision by virtue of paragraph 37(2)(c) for the imposition of a penalty on a relevant person, the regulations –
- (a) must also include provision enabling the relevant person to challenge the penalty in legal proceedings;
  - (b) may, in particular, specify the grounds on which and the time within which a penalty may be challenged and the remedies that may be given.
- (4) Except as provided by the regulations, the validity of a penalty imposed by virtue of paragraph 37 is not to be questioned in any legal proceedings.

*Consumer redress orders*

- 40 (1) Regulations made by virtue of paragraph 37(2)(d) may, in particular –
- (a) make provision about the requirements that may be imposed by a consumer redress order, including, in particular, requirements as to –
    - (i) paying compensation to affected heat network consumers;
    - (ii) preparing and distributing a written statement about the contravention;
    - (iii) terminating or varying contracts entered into with affected heat network consumers;
  - (b) make provision about the maximum amount of compensation that a relevant person may be required to pay;
  - (c) make provision about procedure;
  - (d) make provision about challenges to a consumer redress order in legal proceedings (including, in particular, specifying the grounds on which and the time within which an order may be challenged and the remedies that may be given);
  - (e) make provision about the payment of interest;
  - (f) make provision about payment of compensation (and any interest) in instalments;
  - (g) specify how a consumer redress order may be enforced;
  - (h) make provision enabling the Regulator to accept an enforcement undertaking from a relevant person and about the consequences of accepting such an undertaking.
- (2) The regulations may provide for –
- (a) publication by the Regulator of a statement of policy with respect to the making of consumer redress orders and the determination of the requirements imposed by them;
  - (b) revision of the statement of policy.

- (3) Except as provided by the regulations, the validity of a consumer redress order is not to be questioned in any legal proceedings.

*Functions under Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002*

- 41 (1) The regulations may make provision for the purpose of enabling the Regulator to exercise such functions of the Competition and Markets Authority under Part 1 of the Competition Act 1998, or such descriptions of those functions, as are specified in the regulations.
- (2) The regulations may make provision for the purpose of enabling the Regulator to exercise such functions of the Competition and Markets Authority under Part 4 of the Enterprise Act 2002, or such descriptions of those functions, as are specified in the regulations.
- (3) Regulations made by virtue of sub-paragraph (1) or (2) may, in particular, make provision –
- (a) about the concurrent exercise of functions by the Regulator and the Competition and Markets Authority;
  - (b) for the joint exercise of functions by the Regulator and the Competition and Markets Authority in a particular case;
  - (c) as to the procedure for determining which of the Regulator and the Competition and Markets Authority is to exercise functions in a particular case;
  - (d) as to the circumstances in which the exercise of a function by the Regulator or the Competition and Markets Authority precludes the exercise of the function by the other;
  - (e) about assistance that may be given by the Regulator to the Competition and Markets Authority.

**PART 7**

INVESTIGATION

*Investigation of charges*

- 42 (1) The regulations may make provision about how the Regulator is to determine whether charges payable by heat network consumers for, or in relation to, heating, cooling or hot water supplied by means of a relevant heat network contravene a condition of a heat network authorisation by reason of being disproportionate (see paragraph 14(5)(b)).
- (2) The regulations may, in particular, make provision enabling the Regulator to specify from time to time the methods that are to be used by the Regulator to determine whether charges are disproportionate.

*Powers to require information etc*

- 43 (1) The regulations may make provision conferring powers on the Regulator or imposing requirements on any person, for the purposes of or in connection with enabling the Regulator –
- (a) to monitor and secure compliance with relevant conditions or requirements;
  - (b) to make an order in respect of the contravention of a relevant condition or requirement;
  - (c) to enforce relevant conditions or requirements;
  - (d) to make a determination under provision made by virtue of paragraph 42(1).
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, enable the Regulator –
- (a) to require information to be supplied;
  - (b) to require copies of documents to be provided;
  - (c) to inspect premises;
  - (d) to inspect and take copies of documents or records;
  - (e) to conduct tests or to require tests to be conducted;
  - (f) to require a person to produce any equipment, document or record and to make available information stored electronically;
  - (g) to seize and detain equipment, documents and records.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular –
- (a) confer powers to enter premises for the purposes of exercising powers conferred by the regulations;
  - (b) make provision about the circumstances in which a warrant is required to exercise a power conferred by virtue of paragraph (a);
  - (c) make provision for the issuing of such a warrant where conditions specified in the regulations are satisfied.
- (4) The regulations may provide for the Regulator to authorise others to exercise powers conferred on it by regulations made by virtue of sub-paragraph (1).
- (5) Regulations made by virtue of sub-paragraph (1) may, in particular, impose requirements relating to –
- (a) the keeping of records by relevant persons;
  - (b) the provision of information by relevant persons and others;
  - (c) the audit and verification of that information.

**PART 8**

STEP-IN ARRANGEMENTS

- 44 The regulations may make provision for, or in connection with, securing that the holder of a heat network authorisation (“the new entity”) is able

effectively to carry on a regulated activity in relation to a relevant heat network in the place of another person (“the old entity”) when directed to do so by the Regulator under a power conferred by a condition in its heat network authorisation (see paragraph 17).

- 45 (1) The regulations may provide for the Regulator to make one or more schemes making such provision as to property, rights and liabilities as is necessary or expedient for the purpose of enabling the new entity to carry on the regulated activity in relation to the relevant heat network in an effective manner.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, authorise a scheme to provide for—
- (a) the transfer of property, rights or liabilities;
  - (b) the creation of interests in, or rights in relation to, property;
  - (c) the creation of rights and liabilities as between the old entity and the new entity;
  - (d) the modification of interests, rights or liabilities of third parties;
  - (e) the enforcement of a right or liability for whose transfer or creation the scheme provides;
  - (f) the entering into of agreements and the execution of instruments for the purposes of, or in connection with, the transfer of property or the transfer or creation of rights or liabilities;
  - (g) the time at which a transfer, creation or modification is to take place;
  - (h) the assessment and payment of compensation.
- (3) Regulations made by virtue of sub-paragraph (1) may provide for the scheme—
- (a) to contain incidental, supplementary, consequential, transitional, transitory or saving provision;
  - (b) to make different provision for different purposes.
- (4) The regulations may provide for the modification of a scheme.
- 46 (1) The regulations may—
- (a) provide for the old entity to give the Regulator such information and assistance as the Regulator may require for the purposes of, or in connection with, the making or implementation of a scheme;
  - (b) provide for the Regulator, for the purposes of, or in connection with, the making or implementation of a scheme, to direct the old entity to take, or to refrain from taking, such steps as are specified in the direction.
- (2) The regulations may provide for the Regulator—
- (a) to make payments to the new entity in respect of costs incurred in connection with carrying on the regulated activity in relation to the heat network;

- (b) to indemnify the new entity in respect of liabilities arising from, or in connection with, carrying on the regulated activity in relation to the heat network.

## PART 9

### SPECIAL ADMINISTRATION REGIME

- 47 The regulations may make provision for, or in connection with, a special administration regime for companies that are holders of heat network authorisations.
- 48 (1) The regulations may make provision for a court to make an order (a “heat network administration order”) in relation to a company that is the holder of a heat network authorisation directing that the affairs, business and property of the company are to be managed by a person appointed by the court (referred to in this Part as the heat network administrator of the company).
  - (2) The regulations may make provision about the court that has jurisdiction in a particular case.
  - (3) The regulations may limit the effect of a heat network administration order applying to a non-GB company or a non-NI company to—
    - (a) its affairs and business so far as carried on in Great Britain or Northern Ireland (as the case may be), and
    - (b) its property in Great Britain or Northern Ireland (as the case may be).
- 49 (1) The regulations may make provision about the objectives of a heat network administration order and the means by which the objectives may be secured.
  - (2) The regulations may, in particular, require the heat network administrator to exercise functions so as to achieve the objectives set out in sub-paragraph (3) so far as possible.
  - (3) The objectives referred to in sub-paragraph (2) are—
    - (a) to secure that the supply of heating, cooling or hot water is continued at the lowest cost which it is reasonably practicable to incur,
    - (b) to secure that the company’s relevant heat network is and continues to be maintained and developed as an efficient and economical system, and
    - (c) to secure that it becomes unnecessary, by using such means as are allowed by the regulations, for the heat network administration order to remain in force.
  - (4) The regulations may make provision about the means that may be used, including—
    - (a) the rescue as a going concern of the company subject to the heat network administration order;

- (b) a transfer as a going concern of so much of the undertaking of the company subject to the heat network administration order as is associated with the company’s relevant heat network.
  - (5) Regulations made by virtue of sub-paragraph (4) may also provide for the heat network administrator to make arrangements for securing that heat network consumers who are supplied with heating, cooling or hot water by the company’s relevant heat network have an alternative supply of heating, cooling or hot water (as the case may be).
  - (6) The regulations may make provision about –
    - (a) the means by which a transfer falling within sub-paragraph (4)(b) may be effected;
    - (b) the circumstances in which the objectives set out in sub-paragraph (3) may or may not be achieved by means of such a transfer.
  - (7) In this paragraph, “the company’s relevant heat network”, in relation to a company that is the holder of a heat network authorisation, means the relevant heat network to which the authorisation relates.
- 50 (1) The regulations may make provision for applying, with such modifications as appear to the appropriate authority to be appropriate, the provisions mentioned in sub-paragraph (2).
- (2) The provisions referred to in sub-paragraph (1) are –
    - (a) sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees);
    - (b) sections 171 and 196 of the Energy Act 2004 (interpretation), so far as relating to the provisions mentioned in paragraph (a);
    - (c) sections 19 to 33 of, and the Schedule to, the Energy Act (Northern Ireland) 2011 (c. 6 (N.I.)) (special administration regime for protected energy companies);
    - (d) section 35 of the Energy Act (Northern Ireland) 2011 (interpretation), so far as relating to the provisions mentioned in paragraph (c).
  - (3) In this paragraph, “the appropriate authority” means –
    - (a) in relation to England and Wales and Scotland, the Secretary of State;
    - (b) in relation to Northern Ireland, the Department.
- 51 In this Part –
- “company” means –
    - (a) a company registered under the Companies Act 2006, or
    - (b) an unregistered company;
  - “heat network administration order” has the meaning given by paragraph 48;
  - “heat network administrator” has the meaning given by paragraph 48;

“non-GB company” means a company incorporated outside Great Britain;

“non-NI company” means a company incorporated outside Northern Ireland;

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

## PART 10

### SUPPLY TO PREMISES

- 52 (1) The regulations may make provision about—
- (a) offers to connect premises to a relevant heat network, the terms of such offers and acceptance of such an offer;
  - (b) the conduct of holders of heat network authorisations towards heat network consumers or in relation to premises connected or proposed to be connected to a relevant heat network.
- (2) Regulations made by virtue of this paragraph may make provision relating to the connection of premises to a relevant heat network whether a connection is for the purpose of—
- (a) supplying heating, cooling or hot water to premises, or
  - (b) supplying thermal energy to a relevant heat network.
- (3) The following paragraphs of this Part make further provision about regulations that may be made by virtue of this paragraph.
- 53 The regulations may—
- (a) impose duties, in circumstances specified by the regulations, to make and maintain a connection between a relevant heat network and any premises;
  - (b) impose duties as to providing such equipment as may be needed to make the connection function;
  - (c) provide for the procedure to be followed when seeking to have a connection made between a relevant heat network and any premises;
  - (d) provide for persons seeking a connection to premises to pay an amount in respect of costs incurred in making the connection or in respect of the cost of equipment provided;
  - (e) provide for the giving of security for the payment of such an amount in respect of the cost of equipment provided;
  - (f) make provision about the terms upon which a connection is made (including provision for deeming a contract to have been made and for making schemes for determining the terms and conditions to be incorporated in such a contract).
- 54 The regulations may—



- (a) make provision as to the meters and other equipment that may be installed for the purposes of making and maintaining a connection between a relevant heat network and any premises;
- (b) impose requirements as to the operation of such meters and other equipment.

55 The regulations may –

- (a) prohibit the making of a charge where, for the purpose of meeting the needs of a disabled person, a meter or other equipment is moved or replaced;
- (b) make provision as to the steps that may be taken if payments relating to the supply of heating, cooling or hot water are not made (including provision for removing a connection to a relevant heat network or otherwise preventing the further supply of heating, cooling or hot water);
- (c) make provision as to the arrangements that may apply, and the steps that may be taken, if –
  - (i) premises are supplied with heating, cooling or hot water without agreement as to the terms on which the supply is made, or
  - (ii) a connection is made to a relevant heat network, or restored, without authority;
- (d) make provision in connection with securing the rights of a holder of a heat network authorisation as owner of equipment provided by it.

56 The regulations may –

- (a) confer powers to enter premises for the purposes of installing, inspecting, repairing, replacing, altering or removing meters or other equipment;
- (b) confer powers to enter premises for the purposes of reading a register on a meter or other equipment;
- (c) make provision for the issuing of warrants to enter premises for the purposes of exercising powers conferred by regulations made by virtue of this paragraph where conditions specified in the regulations are satisfied;
- (d) make provision as to the persons who may exercise powers conferred by regulations under this paragraph.

57 The regulations may revoke or amend the Heat Network (Metering and Billing) Regulations 2014 (S.I. 2014/3120).

**PART 11**

## CONSUMER PROTECTION

*Standards of performance*

- 58 (1) The regulations may prescribe such standards of performance in connection with the regulated activities of holders of heat network authorisations, so far as affecting –
- (a) heat network consumers supplied by the relevant heat networks to which their authorisations relate, or
  - (b) potential heat network consumers who would be supplied by those relevant heat networks,
- as in the Regulator’s opinion ought to be achieved as regards those persons.
- (2) The regulations may –
- (a) specify the circumstances in which the holders of heat network authorisations are to inform persons of rights conferred on them under regulations made by virtue of this paragraph;
  - (b) provide for exemptions from standards of performance;
  - (c) require the holders of heat network authorisations to provide information about their compliance with standards of performance.
- (3) The regulations may provide –
- (a) for compensation to be made to persons affected by a failure to meet a standard of performance;
  - (b) for the determination of the amount of compensation.
- (4) The regulations may provide for the making of compensation under regulations made by virtue of this paragraph in respect of a failure to meet a standard of performance not to prejudice any other remedy which may be available in respect of the act or omission which constituted the failure.
- (5) Regulations made in relation to England and Wales and Scotland by virtue of sub-paragraphs (1) to (3), may provide for the Regulator to make provision by regulations about the matters referred to in those sub-paragraphs.
- (6) The regulations may require that regulations made by the Regulator by virtue of sub-paragraph (5) are made with the consent of the Secretary of State.
- (7) Regulations made by the Regulator by virtue of sub-paragraph (5) are to be made by statutory instrument.
- 59 (1) The regulations may provide for the Regulator, from time to time –
- (a) to determine such standards of overall performance in connection with regulated activities as, in the Regulator’s opinion, ought to be achieved by holders of heat network authorisations;
  - (b) to publish those standards.

- (2) The regulations may provide for the Regulator to determine different standards for different descriptions of holders of heat network authorisations.
  - (3) The regulations may require holders of heat network authorisations to conduct their regulated activities in such a way as can reasonably be expected to lead to compliance with standards set under regulations made by virtue of this paragraph.
- 60 (1) The regulations may make provision about the steps to be taken in connection with prescribing or determining standards of performance under paragraph 58 or 59.
- (2) The regulations may, in particular, make provision about—
    - (a) conducting research;
    - (b) publishing information about proposals to prescribe or determine standards;
    - (c) considering representations about proposals;
    - (d) consulting such persons or descriptions of person as are specified in the regulations.

#### *Consumer advocacy bodies*

- 61 (1) The regulations may provide for Part 1 of the Consumers, Estate Agents and Redress Act 2007 (consumer advocacy bodies) to apply in relation to heat network consumers as it applies in relation to gas or electricity consumers, with such modifications as appear to the appropriate authority to be appropriate.
- (2) The regulations may provide for sections 24 and 25 of the Consumers, Estate Agents and Redress Act 2007 (provision of information to consumer advocacy bodies) to apply in relation to relevant persons as they apply to regulated providers within the meaning of section 25 of that Act, with such modifications as appear to the appropriate authority to be appropriate.
  - (3) The regulations may also make provision extending to Northern Ireland or applying in relation to the General Consumer Council for Northern Ireland that corresponds to such provision in Part 1 of the Consumers, Estate Agents and Redress Act 2007 as does not extend to Northern Ireland or does not apply in relation to the General Consumer Council for Northern Ireland (as the case may be).
  - (4) In this paragraph, “the appropriate authority” means—
    - (a) in relation to England and Wales and Scotland, the Secretary of State;
    - (b) in relation to Northern Ireland, the Department.

#### *Complaints handling and redress schemes*

- 62 The regulations may provide for Part 2 of the Consumers, Estate Agents and Redress Act 2007 (complaints handling and redress schemes)—

- (a) to apply in relation to heat network consumers in England, Wales or Scotland as it applies in relation to gas or electricity consumers, with such modifications as appear to the Secretary of State to be appropriate;
- (b) to apply in relation to relevant persons in England, Wales or Scotland as it applies in relation to regulated providers within the meaning of that Part, with such modifications as appear to the Secretary of State to be appropriate.

*Consumer complaints and dispute resolution arrangements: Northern Ireland*

- 63 (1) The regulations may, in relation to Northern Ireland, provide for consumer complaints legislation to apply in relation to a heat network consumer or potential heat network consumer as it applies in relation to a customer or potential customer of, or user of electricity or gas supplied by, an authorised supplier, with such modifications as appear to the Department to be appropriate.
- (2) In this paragraph, “consumer complaints legislation” means Article 22 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and such other provisions of that Order as relate to it.
- 64 The regulations may, in relation to Northern Ireland, make provision about the resolution of disputes involving a heat network consumer or potential heat network consumer (including by providing for a scheme under which complaints may be made to, and investigated and determined by, an independent person or may be referred to arbitration).

*Documents for Citizens Advice, Consumer Scotland and the General Consumer Council for Northern Ireland*

- 65 The regulations may make provision requiring the Regulator, where the Regulator publishes a document of a description specified in the regulations, to send a copy of the document to—
- (a) Citizens Advice and Consumer Scotland, or
  - (b) the General Consumer Council for Northern Ireland (as the case may be).

## PART 12

### FINANCIAL ARRANGEMENTS

- 66 (1) The regulations may provide for the Regulator to include in the conditions of heat network authorisations provision requiring the payment of sums relating to the costs incurred by the Secretary of State or the Department in giving financial assistance under regulations made by virtue of paragraph 50 that apply—

- (a) any provision of sections 165 to 167 of the Energy Act 2004 (grants, loans, indemnities and guarantees given by the Secretary of State), or
  - (b) any provision of sections 28 to 30 of the Energy Act (Northern Ireland) 2011 (grants, loans, indemnities and guarantees given by the Department).
- (2) The regulations may –
  - (a) provide for the Secretary of State or the Department to give directions to the Regulator for the purpose of securing that sums relating to those costs are included in the sums payable by virtue of conditions in heat network authorisations;
  - (b) provide for the Regulator to comply with any such direction.
- 67 (1) The regulations may provide for the Regulator to include in –
  - (a) the conditions of a heat network authorisation, or
  - (b) the conditions of an installation and maintenance licence,provision requiring the payment of sums relating to the costs incurred by a person or body in providing, or arranging for the provision of, consumer advocacy and advice in relation to heat network consumers.
- (2) The regulations may –
  - (a) provide for the Secretary of State or the Department to give directions to the Regulator for the purpose of securing that sums relating to those costs are included in the sums payable by virtue of conditions in heat network authorisations or installation and maintenance licences;
  - (b) provide for the Regulator to comply with any such direction.
- 68 The regulations may make provision for the Regulator to pay into the Consolidated Fund or the Consolidated Fund of Northern Ireland sums received in consequence of –
  - (a) provision made by or under the regulations, or
  - (b) a condition of a heat network authorisation, code manager licence or installation and maintenance licence.

## PART 13

### MISCELLANEOUS AND GENERAL

#### *Consultation and cooperation*

- 69 The regulations may –
  - (a) make provision about consultation and cooperation with such persons or descriptions of person as are specified in the regulations;
  - (b) make provision as to the purposes of such cooperation.
- 70 The regulations may require the Regulator to assist a public authority that carries out, in relation to Wales or Scotland, functions as regards limiting

targeted greenhouse gases in relation to heat networks (including by providing information).

*Objectives of the Secretary of State and the Department*

- 71 (1) The regulations may make provision about the objectives of the Secretary of State and the Department in carrying out functions under the regulations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide that the principal objective of the Secretary of State or the Department is to protect the interests of existing and future heat network consumers.
- (3) The regulations may specify particular interests of existing and future heat network consumers that are to be protected.

*Offences*

- 72 (1) The regulations may provide for the creation of offences.
- (2) The regulations may deal with matters relating to such offences, including the provision of defences and evidentiary matters.
- 73 (1) The regulations may provide for an offence created by virtue of regulations made under paragraph 72 to be triable –
- (a) only summarily, or
- (b) either summarily or on indictment.
- (2) The regulations must provide for such an offence to be punishable on indictment with a fine.
- (3) The regulations must provide for such an offence to be punishable on summary conviction in England and Wales with a fine.
- (4) The regulations must provide for such an offence to be punishable on summary conviction in Scotland or Northern Ireland with a fine not exceeding an amount specified in the regulations.

*Crown application*

- 74 (1) The regulations may make provision about application to the Crown.
- (2) The regulations may also, to the extent that they bind the Crown, restrict or modify the application of the regulations.
- (3) Regulations made by virtue of sub-paragraph (2) may, in particular, provide that a power exercisable in relation to land in which there is a Crown or Duchy interest is subject to a requirement to obtain consent from a person specified in the regulations.
- (4) In this paragraph, “Crown or Duchy interest” means –
- (a) an interest belonging to His Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall;

- (b) an interest which belongs to a government department or which is held in trust for His Majesty for the purposes of a government department;
  - (c) an interest which belongs to an office-holder in the Scottish Administration or which is held in trust for His Majesty for the purposes of the Scottish Administration by such an office-holder.
- (5) This includes, in particular –
- (a) an interest which belongs to His Majesty in right of His Majesty’s Government in Northern Ireland, and
  - (b) an interest which belongs to a Northern Ireland department or which is held in trust for His Majesty for the purposes of a Northern Ireland department.
- (6) A reference in this paragraph to an office-holder in the Scottish Administration is to be construed in accordance with section 126(7) of the Scotland Act 1998.

## SCHEDULE 19

Section 249

### LICENSING OF ACTIVITIES RELATING TO LOAD CONTROL

1 The Electricity Act 1989 is amended as follows.

2 After section 56FB insert –

#### **“56FBA New licensable activities: load control of energy smart appliances**

- (1) The Secretary of State may by regulations amend this Part so as –
- (a) to provide for one or more activities within subsection (2) to be added to the activities which are licensable activities, or
  - (b) where regulations have previously been made under paragraph (a) in relation to an activity –
    - (i) to amend the definition of the activity, or
    - (ii) to provide for the activity to cease to be a licensable activity.
- (2) The activities within this subsection are activities connected with –
- (a) the carrying on or facilitating of load control;
  - (b) the provision of services or facilities related to load control; but not the activities mentioned in subsection (3).
- (3) The activities within this subsection are –
- (a) the provision of relevant electronic communications networks;
  - (b) the making, selling, importing or distributing of energy smart appliances;

- 
- (c) things done by end-users of energy smart appliances (in their capacity as such).
- (4) Regulations under subsection (1)(a) may define activities which are to become licensable activities in any manner the Secretary of State considers appropriate, including –
- (a) by reference to the purpose for which an activity is carried out; and
  - (b) by reference to the position of an activity in a sequence of activities necessary to secure a particular outcome.
- (5) Regulations under this section may make consequential, transitional, incidental or supplementary provision, including –
- (a) amendments (or repeals) of any provision of this Act or any other enactment, including any enactment comprised in, or an instrument made under, an Act of the Scottish Parliament;
  - (b) in the case of regulations under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities;
  - (c) provision modifying any standard conditions of licences.
- (6) Transitional provision under subsection (5) may in particular include provision about persons already undertaking activities that are to become licensable activities by virtue of subsection (1)(a), such as provision –
- (a) about the application to such persons of section 4(1);
  - (b) about the granting of licences to such persons.
- (7) Regulations under this section may, in particular, also make provision –
- (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence;
  - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities;
  - (c) specifying that a licence, and any modification of a licence, must be in writing;
  - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence;
  - (e) conferring functions on the Secretary of State or the Authority.
- (8) In this section, “energy smart appliance”, “load control” and “relevant electronic communications network” have the same meaning as in Part 8 of the Energy Act 2023.



### **56FBB Regulations under section 56FBA**

- (1) Before making regulations under section 56FBA, the Secretary of State must consult—
    - (a) the Authority, and
    - (b) such other persons as the Secretary of State thinks appropriate.
  - (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
  - (3) The power to make such regulations may not be exercised after the end of a period of seven years beginning with the day on which the first such regulations come into force (for any purpose).
  - (4) Regulations under section 56FBA may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by resolution of, each House of Parliament.”
- 3 At the end of section 56FC(2) (competitive tenders: definition of “new licensable activities”), insert “or regulations under section 56FBA(1)(a)”.
- 4 In section 106(2)(a) (regulations and orders), after “State” insert “(other than regulations under section 56FBA)”.

## SCHEDULE 20

Section 284

### ENFORCEMENT UNDERTAKINGS

#### *Procedure*

- 1 (1) The Secretary of State must publish a procedure for entering into enforcement undertakings.
- (2) The Secretary of State may revise the procedure (and must publish any revised procedure).
- (3) The Secretary of State must consult any persons the Secretary of State considers appropriate before publishing or revising the procedure.

#### *Variation of terms*

- 2 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both parties agree in writing.

*Compliance certificates*

- 3 (1) Where the Secretary of State is satisfied that an enforcement undertaking has been complied with, the Secretary of State must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”).
- (2) A person may at any time apply to the Secretary of State for a compliance certificate.
- (3) The Secretary of State may specify in what form an application under sub-paragraph (2) must be made and what information (if any) must accompany it.
- (4) Where an application is made under sub-paragraph (2), the Secretary of State must give the applicant notice in writing of the Secretary of State’s decision on the application within 14 days beginning with the day after the day on which the application is received.

*Inaccurate, incomplete or misleading information*

- 4 Where the Secretary of State is satisfied that a person who has given an enforcement undertaking has provided inaccurate, misleading or incomplete information in relation to the undertaking, the Secretary of State may treat the person as having failed to comply with the undertaking (and, if the Secretary of State decides so to treat the person, must by notice revoke any compliance certificate given to the person in respect of the enforcement undertaking).

*Appeal against decision under paragraph 3 or 4*

- 5 (1) An appeal lies to the First-tier Tribunal against a decision of the Secretary of State to refuse an application for a compliance certificate or, in reliance on paragraph 4, to treat the person as having failed to comply with an enforcement undertaking.
- (2) The grounds for appeal are that the decision is –
  - (a) based on an error of fact,
  - (b) wrong in law,
  - (c) unfair or unreasonable, or
  - (d) wrong for any other reason.
- (3) On an appeal under this paragraph, the First-tier Tribunal may –
  - (a) confirm the Secretary of State’s decision or direct that it is not to have effect;
  - (b) award costs or, in Scotland, expenses.

SCHEDULE 21

Section 300

PETROLEUM LICENCES: AMENDMENTS TO MODEL CLAUSES

**PART 1**

PETROLEUM (PRODUCTION) (LANDWARD AREAS) REGULATIONS 1995

- 1 In the Petroleum (Production) (Landward Areas) Regulations 1995 (S.I. 1995/1436), Schedule 3 (model clauses for petroleum exploration and development licences in landward areas) is amended as follows.
- 2 After clause 37 insert –

**“37A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.

- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means—
- (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 37(4).”
- 3 (1) Clause 38 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
- (a) after sub-paragraph (i) insert—
    - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 37A);
    - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Petroleum Act 1998;”;
  - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 4 (1) Clause 38A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 38(2)(c), (d), (e) or (g) occurs in relation to one of those persons;

- (b) an event mentioned in clause 38(2)(b) occurs which consists of a breach of clause 37A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 38(2)(j) occurs in relation to a change in control of one of those persons (see clause 37A); or
  - (d) an event mentioned in clause 38(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

## PART 2

### PETROLEUM (CURRENT MODEL CLAUSES) ORDER 1999

#### *Introduction*

- 5 The Petroleum (Current Model Clauses) Order 1999 (S.I. 1999/160) is amended in accordance with this Part of this Schedule.

#### *Part 2 of Schedule 2*

- 6 Part 2 of Schedule 2 (current model clauses for controlled waters or seaward production licences deriving from Schedule 2 to the 1964 Regulations and Schedule 4 to the 1966 Regulations) is amended in accordance with paragraphs 7 to 9.
- 7 After clause 38 insert –

#### **“38A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –

- (a) consent to the change in control unconditionally,
    - (b) consent to the change in control subject to conditions, or
    - (c) refuse consent to the change in control.
  - (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision—
    - (a) give the company an opportunity to make representations, and
    - (b) consider any representations that are made.
  - (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
  - (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
    - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
    - (b) conditions relating to the performance of activities permitted by this licence, and
    - (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means—
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 38(4).”
- 8 (1) Clause 39 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
    - (a) after sub-paragraph (i) insert—
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 38A);
      - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice

given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;

- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 9 (1) Clause 39A (power of partial revocation) is amended as follows.
  - (2) For paragraph (1) substitute –
    - “(1) This clause applies in a case where two or more persons are the Licensee and –
      - (a) an event mentioned in clause 39(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
      - (b) an event mentioned in clause 39(2)(b) occurs which consists of a breach of clause 38A(2) or (4) in relation to a change in control of one of those persons;
      - (c) an event mentioned in clause 39(2)(j) occurs in relation to a change in control of one of those persons (see clause 38A); or
      - (d) an event mentioned in clause 39(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
    - (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

### *Part 2 of Schedule 3*

- 10 Part 2 of Schedule 3 (current model clauses for landward production licences deriving from Schedule 3 to the 1966 regulations) is amended in accordance with paragraphs 11 to 13.
- 11 After clause 36 insert –
  - “36A Change in control of Licensee**
  - (1) This clause applies if –
    - (a) the Licensee is a company, or
    - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
  - (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
  - (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
  - (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months

before the date on which it is proposed that the change would occur (if consent were given).

- (5) The OGA may –
    - (a) consent to the change in control unconditionally,
    - (b) consent to the change in control subject to conditions, or
    - (c) refuse consent to the change in control.
  - (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
    - (a) give the company an opportunity to make representations, and
    - (b) consider any representations that are made.
  - (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
  - (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
    - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
    - (b) conditions relating to the performance of activities permitted by this licence, and
    - (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means –
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 36(3).”
- 12 (1) Clause 37 (power of revocation) is amended as follows.
- (2) In paragraph (2) –
    - (a) after sub-paragraph (i) insert –
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority



- gave its consent to a change in control of the Licensee (see clause 36A);
- (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 13 (1) Clause 37A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute –
- “(1) This clause applies in a case where two or more persons are the Licensee and –
- (a) an event mentioned in clause 37(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
- (b) an event mentioned in clause 37(2)(b) occurs which consists of a breach of clause 36A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 37(2)(j) occurs in relation to a change in control of one of those persons (see clause 36A); or
- (d) an event mentioned in clause 37(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 4*

- 14 Part 2 of Schedule 4 (current model clauses for landward production licences deriving from Schedule 4 to the 1976 Regulations or Schedule 4 to the 1982 Regulations) is amended in accordance with paragraphs 15 to 17.
- 15 After clause 37 insert –
- “37A Change in control of Licensee**
- (1) This clause applies if –
- (a) the Licensee is a company, or
- (b) where two or more persons are the Licensee, any of those persons is a company,
- and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).

- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 37(3).”

16 (1) Clause 38 (power of revocation) is amended as follows.

- (2) In paragraph (2)–
- (a) after sub-paragraph (i) insert–
    - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 37A);
    - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”
  - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 17 (1) Clause 38A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute–
- “(1) This clause applies in a case where two or more persons are the Licensee and–
- (a) an event mentioned in clause 38(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
  - (b) an event mentioned in clause 38(2)(b) occurs which consists of a breach of clause 37A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 38(2)(j) occurs in relation to a change in control of one of those persons (see clause 37A);  
or
  - (d) an event mentioned in clause 38(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 5*

- 18 Part 2 of Schedule 5 (current model clauses for seaward production licences deriving from Schedule 5 to the 1976 Regulations) is amended in accordance with paragraphs 19 to 21.
- 19 After clause 39 insert–
- “39A Change in control of Licensee**
- (1) This clause applies if–
- (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,
- and references in this clause to a company are to such a company.

- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.

- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 39(4).”
- 20 (1) Clause 40 (power of revocation) is amended as follows.
- (2) In paragraph (2)–
- (a) after sub-paragraph (i) insert–
- “*(j)* if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 39A);
- (k)* if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”
- (b) in the closing words, after “*(g)*” insert “or *(j)* or *(k)*”.
- (3) Omit paragraphs (3) to (5).
- 21 (1) Clause 40A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute–
- “(1) This clause applies in a case where two or more persons are the Licensee and–
- (a) an event mentioned in clause 40(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
- (b) an event mentioned in clause 40(2)(b) occurs which consists of a breach of clause 39A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 40(2)(j) occurs in relation to a change in control of one of those persons (see clause 39A); or
- (d) an event mentioned in clause 40(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 6*

- 22 Part 2 of Schedule 6 (current model clauses for seaward production licences deriving from Schedule 5 to the 1982 Regulations) is amended in accordance with paragraphs 23 to 25.
- 23 After clause 38 insert–
- “38A Change in control of Licensee**
- (1) This clause applies if–

- (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and

- (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 38(4).”
- 24 (1) Clause 39 (power of revocation) is amended as follows.
- (2) In paragraph (2)–
- (a) after sub-paragraph (i) insert–
- “*(j)* if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 38A);
- (k)* if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
- (b) in the closing words, after “*(g)*” insert “or *(j)* or *(k)*”.
- (3) Omit paragraphs (3) to (5).
- 25 (1) Clause 39A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute–
- “(1) This clause applies in a case where two or more persons are the Licensee and–
- (a) an event mentioned in clause 39(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
- (b) an event mentioned in clause 39(2)(b) occurs which consists of a breach of clause 38A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 39(2)(j) occurs in relation to a change in control of one of those persons (see clause 38A); or
- (d) an event mentioned in clause 39(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 8*

- 26 Part 2 of Schedule 8 (current model clauses for landward development licences deriving from Schedule 5 to the 1984 Regulations) is amended in accordance with paragraphs 27 to 29.

27 After clause 35 insert—

**“35A Change in control of Licensee**

- (1) This clause applies if—
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may—
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision—
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.



- (10) In this clause “the interested parties” means—
- (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 35(3).”
- 28 (1) Clause 36 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
- (a) after sub-paragraph (i) insert—
    - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 35A);
    - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
  - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 29 (1) Clause 36A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 36(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
  - (b) an event mentioned in clause 36(2)(b) occurs which consists of a breach of clause 35A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 36(2)(j) occurs in relation to a change in control of one of those persons (see clause 35A);  
or
  - (d) an event mentioned in clause 36(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 9*

30 Part 2 of Schedule 9 (current model clauses for seaward production licences deriving from Schedule 4 to the 1988 Regulations as they had effect before 16 December 1996) is amended in accordance with paragraphs 31 to 33.

31 After clause 41 insert—

**“41A Change in control of Licensee**

- (1) This clause applies if—
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may—
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision—
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and

- (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means –
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 41(4).”
- 32 (1) Clause 42 (power of revocation) is amended as follows.
- (2) In paragraph (2) –
    - (a) after sub-paragraph (i) insert –
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 41A);
      - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
    - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
  - (3) Omit paragraphs (3) to (5).
- 33 (1) Clause 42A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute –
    - “(1) This clause applies in a case where two or more persons are the Licensee and –
      - (a) an event mentioned in clause 42(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
      - (b) an event mentioned in clause 42(2)(b) occurs which consists of a breach of clause 41A(2) or (4) in relation to a change in control of one of those persons;
      - (c) an event mentioned in clause 42(2)(j) occurs in relation to a change in control of one of those persons (see clause 41A);  
or
      - (d) an event mentioned in clause 42(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”

- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 10*

34 Part 2 of Schedule 10 (current model clauses for seaward production licences deriving from Schedule 4 to the 1988 Regulations as they had effect on and after 16 December 1996) is amended in accordance with paragraphs 35 to 37.

35 After clause 41 insert –

**“41A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –

- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
    - (b) conditions relating to the performance of activities permitted by this licence, and
    - (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means—
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 41(4).”
- 36 (1) Clause 42 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
    - (a) after sub-paragraph (i) insert—
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 41A);
      - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
    - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
  - (3) Omit paragraphs (3) to (5).
- 37 (1) Clause 42A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
    - “(1) This clause applies in a case where two or more persons are the Licensee and—
      - (a) an event mentioned in clause 42(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
      - (b) an event mentioned in clause 42(2)(b) occurs which consists of a breach of clause 41A(2) or (4) in relation to a change in control of one of those persons;

- (c) an event mentioned in clause 42(2)(j) occurs in relation to a change in control of one of those persons (see clause 41A); or
- (d) an event mentioned in clause 42(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”

(3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

*Part 2 of Schedule 13*

38 Part 2 of Schedule 13 (current model clauses for landward appraisal licences deriving from Schedule 5 to the 1991 Regulations) is amended in accordance with paragraphs 39 to 41.

39 After clause 32 insert –

**“32A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,
 and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.

- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means—
- (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 32(3).”
- 40 (1) Clause 33 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
- (a) after sub-paragraph (h) insert—
    - “(i) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 32A);
    - (j) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Petroleum Act 1998;”;
  - (b) in the closing words, after “(f)” insert “or (i) or (j)”.
- (3) Omit paragraphs (3) to (5).
- 41 (1) Clause 33A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 33(2)(c), (d), (e) or (f) occurs in relation to one of those persons;

- (b) an event mentioned in clause 33(2)(b) occurs which consists of a breach of clause 32A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 33(2)(i) occurs in relation to a change in control of one of those persons (see clause 32A);  
or
- (d) an event mentioned in clause 33(2)(j) occurs which consists of a failure by one of those persons as mentioned in that provision.”

(3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

#### *Part 2 of Schedule 14*

42 Part 2 of Schedule 14 (current model clauses for landward development licences deriving from Schedule 6 to the 1991 Regulations) is amended in accordance with paragraphs 43 to 45.

43 After clause 34 insert –

#### **“34A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.



- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
  - (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
    - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
    - (b) conditions relating to the performance of activities permitted by this licence, and
    - (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means—
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 34(3).”
- 44 (1) Clause 35 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
    - (a) after sub-paragraph (i) insert—
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 34A);
      - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act of 1998;”;
    - (b) in the closing words, after “(g)” insert “or (j) or (k)”.
  - (3) Omit paragraphs (3) to (5).
- 45 (1) Clause 35A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
    - “(1) This clause applies in a case where two or more persons are the Licensee and—

- (a) an event mentioned in clause 35(2)(c), (d), (e) or (g) occurs in relation to one of those persons;
  - (b) an event mentioned in clause 35(2)(b) occurs which consists of a breach of clause 34A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 35(2)(j) occurs in relation to a change in control of one of those persons (see clause 34A); or
  - (d) an event mentioned in clause 35(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

### PART 3

#### PETROLEUM LICENSING (EXPLORATION AND PRODUCTION) (SEAWARD AND LANDWARD AREAS) REGULATIONS 2004

##### *Introduction*

- 46 The Petroleum Licensing (Exploration and Production) (Seaward and Landward Areas) Regulations 2004 (S.I. 2004/352) are amended in accordance with this Part of this Schedule.

##### *Schedule 2*

- 47 Schedule 2 (model clauses for production licences relating to frontier areas – no break clause) is amended in accordance with paragraphs 48 to 50.

- 48 After clause 37 insert –

#### **“37A Change in control of Licensee**

- (1) This clause applies if –
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,
 and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).

- (5) The OGA may –
    - (a) consent to the change in control unconditionally,
    - (b) consent to the change in control subject to conditions, or
    - (c) refuse consent to the change in control.
  - (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
    - (a) give the company an opportunity to make representations, and
    - (b) consider any representations that are made.
  - (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
  - (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
    - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
    - (b) conditions relating to the performance of activities permitted by this licence, and
    - (c) financial conditions.
  - (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
  - (10) In this clause “the interested parties” means –
    - (a) the company,
    - (b) the person who (if consent were granted) would take control of the company, and
    - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
  - (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 37(4).”
- 49 (1) Clause 38 (power of revocation) is amended as follows.
- (2) In paragraph (2) –
    - (a) after sub-paragraph (i) insert –
      - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 37A);
      - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice

given by the Oil and Gas Authority to that company  
 under section 5D of the Act;”;

- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 50 (1) Clause 38A (power of partial revocation) is amended as follows.
  - (2) For paragraph (1) substitute –
    - “(1) This clause applies in a case where two or more persons are the Licensee and –
      - (a) an event mentioned in clause 38(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons;
      - (b) an event mentioned in clause 38(2)(b) occurs which consists of a breach of clause 37A(2) or (4) in relation to a change in control of one of those persons;
      - (c) an event mentioned in clause 38(2)(j) occurs in relation to a change in control of one of those persons (see clause 37A); or
      - (d) an event mentioned in clause 38(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
    - (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

### Schedule 3

- 51 Schedule 3 (model clauses for production licences relating to frontier areas – including break clause) is amended in accordance with paragraphs 52 to 54.
- 52 After clause 38 insert –
  - “38A Change in control of Licensee**
  - (1) This clause applies if –
    - (a) the Licensee is a company, or
    - (b) where two or more persons are the Licensee, any of those persons is a company,
 and references in this clause to a company are to such a company.
  - (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
  - (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
  - (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months

before the date on which it is proposed that the change would occur (if consent were given).

- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 38(4).”

53 (1) Clause 39 (power of revocation) is amended as follows.

- (2) In paragraph (2) –
  - (a) after sub-paragraph (i) insert –
    - “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority

- gave its consent to a change in control of the Licensee (see clause 38A);
- (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act;”;
- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 54 (1) Clause 39A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute –
- “(1) This clause applies in a case where two or more persons are the Licensee and –
- (a) an event mentioned in clause 39(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons;
- (b) an event mentioned in clause 39(2)(b) occurs which consists of a breach of clause 38A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 39(2)(j) occurs in relation to a change in control of one of those persons (see clause 38A); or
- (d) an event mentioned in clause 39(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

#### Schedule 4

- 55 Schedule 4 (model clauses for standard production licences) is amended in accordance with paragraphs 56 to 58.
- 56 After clause 36 insert –
- “36A Change in control of Licensee**
- (1) This clause applies if –
- (a) the Licensee is a company, or
- (b) where two or more persons are the Licensee, any of those persons is a company,
- and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.

- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 36(4).”

57 (1) Clause 37 (power of revocation) is amended as follows.

- (2) In paragraph (2) –

- (a) after sub-paragraph (i) insert—
- “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 36A);
  - (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act;”;
- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 58 (1) Clause 37A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 37(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons;
  - (b) an event mentioned in clause 37(2)(b) occurs which consists of a breach of clause 36A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 37(2)(j) occurs in relation to a change in control of one of those persons (see clause 36A);  
or
  - (d) an event mentioned in clause 37(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

### *Schedule 6*

- 59 Schedule 6 (model clauses for petroleum exploration and development licences) is amended in accordance with paragraphs 60 to 62.
- 60 After clause 35 insert—
- “35A Change in control of Licensee**
- (1) This clause applies if—
- (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,
- and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the Oil and Gas Authority (“the OGA”).



- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, the question of whether a person has control of a company is to be determined in accordance with the test set out in clause 35(4).”

61 (1) Clause 36 (power of revocation) is amended as follows.

- (2) In paragraph (2)–
- (a) after sub-paragraph (i) insert–
- “(j) if the Licensee is a company, any breach of a condition subject to which the Oil and Gas Authority gave its consent to a change in control of the Licensee (see clause 35A);
- (k) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the Oil and Gas Authority to that company under section 5D of the Act;”;
- (b) in the closing words, after “(g)” insert “or (j) or (k)”.
- (3) Omit paragraphs (3) to (5).
- 62 (1) Clause 36A (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute–
- “(1) This clause applies in a case where two or more persons are the Licensee and–
- (a) an event mentioned in clause 36(2)(c), (d), (e), (ee) or (g) occurs in relation to one of those persons;
- (b) an event mentioned in clause 36(2)(b) occurs which consists of a breach of clause 35A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 36(2)(j) occurs in relation to a change in control of one of those persons (see clause 35A);
- or
- (d) an event mentioned in clause 36(2)(k) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

#### PART 4

##### PETROLEUM LICENSING (PRODUCTION) (SEAWARD AREAS) REGULATIONS 2008

63 In the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225), the Schedule (model clauses for seaward area production licences) is amended as follows.

64 After clause 40 insert–

**“40A Change in control of Licensee**

- (1) This clause applies if–
- (a) the Licensee is a company, or
- (b) where two or more persons are the Licensee, any of those persons is a company,

and references in this clause to a company are to such a company.

- (2) A change in control of a company is not permitted without the consent of the OGA.
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may –
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision –
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include –
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means –
  - (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.

- (11) For the purposes of this clause, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, modified as specified in clause 40(4).”
- 65 (1) Clause 41 (power of revocation) is amended as follows.
- (2) In paragraph (2)–
- (a) after sub-paragraph (j) insert –
- “(k) if the Licensee is a company, any breach of a condition subject to which the OGA gave its consent to a change in control of the Licensee (see clause 40A),
- (l) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the OGA to that company under section 5D of the Act,”;
- (b) in the closing words, after “(h)” insert “or (k) or (l)”.
- (3) Omit paragraphs (3) to (5).
- 66 (1) Clause 42 (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute –
- “(1) This clause applies in a case where two or more persons are the Licensee and –
- (a) an event mentioned in clause 41(2)(c), (d), (e), (f) or (h) occurs in relation to one of those persons;
- (b) an event mentioned in clause 41(2)(b) occurs which consists of a breach of clause 40A(2) or (4) in relation to a change in control of one of those persons;
- (c) an event mentioned in clause 41(2)(k) occurs in relation to a change in control of one of those persons (see clause 40A); or
- (d) an event mentioned in clause 41(2)(l) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

## PART 5

### PETROLEUM LICENSING (EXPLORATION AND PRODUCTION) (LANDWARD AREAS) REGULATIONS 2014

- 67 In the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686), Schedule 2 (model clauses for petroleum exploration and development licences) is amended as follows.

68 After clause 40 insert—

**“40A Change in control of Licensee**

- (1) This clause applies if—
  - (a) the Licensee is a company, or
  - (b) where two or more persons are the Licensee, any of those persons is a company,and references in this clause to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the OGA.
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company.
- (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The OGA may—
  - (a) consent to the change in control unconditionally,
  - (b) consent to the change in control subject to conditions, or
  - (c) refuse consent to the change in control.
- (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision—
  - (a) give the company an opportunity to make representations, and
  - (b) consider any representations that are made.
- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include—
  - (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
  - (b) conditions relating to the performance of activities permitted by this licence, and
  - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.

- (10) In this clause “the interested parties” means—
- (a) the company,
  - (b) the person who (if consent were granted) would take control of the company, and
  - (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, modified as specified in clause 40(4).”
- 69 (1) Clause 41 (power of revocation) is amended as follows.
- (2) In paragraph (2)—
- (a) after sub-paragraph (j) insert—
    - “(k) if the Licensee is a company, any breach of a condition subject to which the OGA gave its consent to a change in control of the Licensee (see clause 40A),
    - (l) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the OGA to that company under section 5D of the Act,”;
  - (b) in the closing words, after “(h)” insert “or (k) or (l)”.
- (3) Omit paragraphs (3) to (5).
- 70 (1) Clause 42 (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and—
- (a) an event mentioned in clause 41(2)(c), (d), (e), (f) or (h) occurs in relation to one of those persons;
  - (b) an event mentioned in clause 41(2)(b) occurs which consists of a breach of clause 40A(2) or (4) in relation to a change in control of one of those persons;
  - (c) an event mentioned in clause 41(2)(k) occurs in relation to a change in control of one of those persons (see clause 40A); or
  - (d) an event mentioned in clause 41(2)(l) occurs which consists of a failure by one of those persons as mentioned in that provision.”
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

## SCHEDULE 22

Section 305

ACCESSION TO CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR  
DAMAGE

- 1 In section 13 of the Nuclear Installations Act 1965 (“the 1965 Act”) (exclusion, extension or reduction of compensation in certain cases), in subsection (5A), after “(1ZA),” insert “(1ZAA),”.
- 2 (1) Section 16 of the 1965 Act (satisfaction of claims) is amended as follows.
  - (2) In subsection (1ZA) after “or 9” insert “, other than CSC-only claims,”.
  - (3) After subsection (1ZA) insert—

“(1ZAA) Notwithstanding subsection (1), if the amount payable by a person in respect of CSC-only claims for compensation under this Act in respect of any one occurrence or event constituting a breach of a duty imposed on that person by section 7, 7B, 8 or 9 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of 300 million special drawing rights, that person is not required to satisfy further claims for compensation.”
  - (4) In subsection (1A) for “or (3B)” substitute “, (1ZAA), (3B), (3BA), (3BB), (3BC) or (3BD)”.
  - (5) In subsection (3)(a) after “subsection (1)” insert “, (1ZA), (1ZAA), (1ZB)”.
  - (6) In subsection (3B)—
    - (a) after “or 10” insert “, other than CSC-only claims (“non-CSC-only claims”),”,
    - (b) after “further” insert “non-CSC-only”, and
    - (c) after “special relevant claims” insert “or CSC claims (or both)”.
  - (7) After subsection (3B) insert—

“(3BA) To the extent that further non-CSC-only claims for compensation are special relevant claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of 1,500 million euros (in the aggregate and apart from interest or costs).

(3BB) To the extent that further non-CSC-only claims for compensation are CSC claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of the aggregate of 700 million euros and the value of the CSC international pooled funds (in the aggregate and apart from interest or costs).

(3BC) To the extent that further non-CSC-only claims for compensation are both special relevant claims and CSC claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of the aggregate of 1,500 million euros and the value of the CSC international pooled funds (in the aggregate and apart from interest or costs).

- (3BD) If the amount payable in respect of CSC-only claims in respect of any one occurrence or event constituting a breach of a duty imposed on a person by section 7, 7B, 8, 9 or 10 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of the aggregate of 300 million special drawing rights and the value of the CSC international pooled funds, the appropriate authority is not required to satisfy further such claims for compensation.
- (3BE) If the CSC international pooled funds are (or will be) reduced by virtue of claims to which subsection (3) applies by 50%, the appropriate authority is not required to satisfy further claims for compensation if that would give rise to a further reduction of those funds except to the extent that those further claims are non-UK CSC claims.”
- (8) In subsection (3C)(a) after “subsection (3B)” insert “or, in a case where the relevant reciprocating territory is also a CSC territory (as defined by section 16AA), (3BB)”.
- (9) In subsection (3D) –
- (a) in paragraph (b)(i) and (ii) after “subsection (1ZA)” insert “, (1ZAA),” and
  - (b) in paragraph (b)(iii) after “subsection (3B)” insert “, (3BA), (3BB), (3BC), (3BD), (3BE)”.
- 3 In section 16A of the 1965 Act (section 16: supplementary), in subsection (7)(b) for “section 18(1A)” substitute “section 16(3BA)”.
- 4 After section 16A of the 1965 Act insert –

**“16AA Section 16: CSC-related definitions**

- (1) This section applies for the purposes of section 16.
- (2) A claim for compensation under this Act in the case of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 is a CSC claim if –
  - (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (3),
  - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (3), or
  - (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (3).
- (3) The injury, damage and significant impairment of the environment referred to in subsection (2) are –



- (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of the United Kingdom or another CSC territory;
  - (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of the United Kingdom or another CSC territory in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf;
  - (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in the United Kingdom or another CSC territory;
  - (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of the United Kingdom or another CSC territory;
  - (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of the United Kingdom or another CSC territory.
- (4) A CSC claim is a CSC-only claim if –
- (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (5),
  - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (5), or
  - (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (5).
- (5) The injury, damage and significant impairment of the environment referred to in subsection (4) are –
- (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of a CSC-only territory;
  - (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of a CSC-only territory in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf;

- (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in a CSC-only territory;
  - (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of a CSC-only territory;
  - (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of a CSC-only territory.
- (6) A CSC-only territory is a CSC territory that is not—
  - (a) the United Kingdom,
  - (b) any other CSC territory that is a relevant territory in relation to a relevant international agreement other than the CSC,
  - (c) a country mentioned in section 26(1B)(b),
  - (d) an overseas territory mentioned in section 26(1B)(c) or (d), or
  - (e) a relevant reciprocating territory.
- (7) A CSC claim is a non-UK CSC claim if—
  - (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (8),
  - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (8), or
  - (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (8).
- (8) The injury, damage and significant impairment of the environment referred to in subsection (7) are—
  - (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of a CSC territory other than the United Kingdom;
  - (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of a CSC territory other than the United Kingdom in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf;

- (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in the United Kingdom or another CSC territory;
- (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of the United Kingdom or another CSC territory;
- (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of the United Kingdom or another CSC territory.

(9) In this section –

“CSC territory” means –

- (a) a country that is a party to the CSC, or
- (b) an overseas territory of such a country, if the CSC applies to the overseas territory,

“national”, in relation to a CSC territory, includes –

- (a) that CSC territory and any part of it,
- (b) a public or private body established in the CSC territory or part of it, whether a body corporate or not,
- (c) a partnership established in the CSC territory or part of it, and
- (d) a trust the validity of which is governed by the law of the CSC territory, and

“the CSC” means the Convention on Supplementary Compensation for Nuclear Damage (as amended or supplemented from time to time).

(10) A reference in this section to a national of the United Kingdom is to be construed in accordance with section 16A(8).”

5 In section 17 of 1965 Act (jurisdiction, shared liability and foreign judgments), in subsection (3B)(a) and (b) after “section 16(1ZA)” insert “, (1ZAA)”.

6 (1) Section 18 of the 1965 Act (general cover for compensation) is amended as follows.

(2) In subsection (1A) for “1,500 million euros” substitute “the aggregate of 1,500 million euros and the value of the CSC international pooled funds”.

(3) In subsection (1D)–

- (a) in each of paragraphs (a) and (b) after “section 16(1ZA)” insert “, (1ZAA)”, and
- (b) in paragraph (c) after “section (3B)” insert “, (3BA), (3BB), (3BD), (3BE)”.

- (4) In subsection (4B)(b) after “section 16(1ZA)” insert “or, where relevant, (1ZAA)”.
- 7 After section 25B of the 1965 Act (amounts in euros) insert –
- “25C Special drawing rights**
- (1) In this Act “special drawing rights” means special drawing rights as defined by the International Monetary Fund; and for the purpose of determining the equivalent in sterling on any day of a sum expressed in special drawing rights, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right –
- (a) for that day, or
  - (b) if no sum has been so fixed for that day, for the last day before that day for which a sum has been so fixed.
- (2) A certificate given by or on behalf of the Treasury stating –
- (a) that a particular sum in sterling has been so fixed for a particular day, or
  - (b) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day,
- is to be conclusive evidence of those matters for the purposes of subsection (1) of this section; and a document purporting to be such a certificate is in any proceedings to be received in evidence and, unless the contrary is proved, to be deemed to be such a certificate.
- (3) The Treasury may charge a reasonable fee for any certificate given in pursuance of subsection (2) of this section.
- (4) Any fee received by the Treasury by virtue of subsection (3) is to be paid into the Consolidated Fund.”
- 8 (1) Section 26 of the 1965 Act (interpretation) is amended as follows.
- (2) In subsection (1) –
- (a) after the definition of “cover period” insert –
 

““CSC claim” has the meaning given by section 16AA;  
 “CSC international pooled funds” means the funds referred to by Article III.1(b) of the Convention on Supplementary Compensation for Nuclear Damage;  
 “CSC-only claim” has the meaning given by section 16AA;”
  - (b) in the definition of “event” –
    - (i) after “(1ZA),” insert “(1ZAA),” and
    - (ii) after “(3B)” insert “, (3BD)”;

- (c) after the definition of “the Minister” insert—
    - ““non-UK CSC claim” has the meaning given by section 16AA;”;
  - (d) in the definition of “occurrence”—
    - (i) after “(1ZA),” insert “(1ZAA),” and
    - (ii) after “(3B)” insert “, (3BD)”.
  - (e) after the definition of “overseas territory” insert—
    - ““the Paris Convention” means the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964, by the Protocol of 16 November 1982 and by the Protocol of 12 February 2004;”.
- (3) In subsection (1A)(a)—
- (a) in the opening words, for “a relevant international agreement” substitute “the Paris Convention”;
  - (b) in sub-paragraph (i)—
    - (i) for “relevant international agreement” (in each place it appears) substitute “Convention”;
    - (ii) for “agreement” (in the third place it appears) substitute “Convention”;
    - (iii) for “agreement’s” substitute “Convention’s”;
  - (c) in sub-paragraph (ii), for “relevant international agreement” substitute “Convention”.



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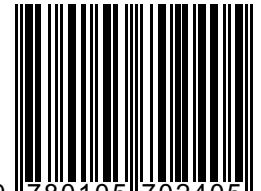
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