

2009 No. 2809 (C. 123)

ENERGY

The Energy Act 2008 (Commencement No. 4 and Transitional Provisions) Order 2009

Made - - - - *20th October 2009*

The Secretary of State, in exercise of the powers conferred by section 110(2) and (3) of the Energy Act 2008(a), makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Energy Act 2008 (Commencement No. 4 and Transitional Provisions) Order 2009.

(2) In this Order—

- (a) “the Act” means the Energy Act 2008; and
- (b) “commencement date” means the date mentioned in article 2(1).

Provisions coming into force

2.—(1) Subject to paragraphs (2) and (3), the following provisions of the Act come into force on 13th November 2009—

- (a) Part 1, Chapter 2 (importation and storage of combustible gas);
- (b) Schedule 1 (amendments relating to Chapters 2 and 3 of Part 1), so far as not already commenced; and section 36 (Chapters 2 and 3: consequential amendments) so far as it relates to the provisions of Schedule 1 commenced by this Order.

(2) The provisions mentioned in paragraph (1) do not come into force so far as they relate to the use of a controlled place for the unloading of gas to a pipeline.

(3) Those provisions come into force so far as they relate to the establishment or maintenance in a controlled place of an installation for the purposes of that activity; but for the purposes of this paragraph “installation” does not include any apparatus, works or services associated with the operation of a pipeline (within the meaning of section 26 of the Petroleum Act 1998(b)).

Transitional provisions: storage activities

3.—(1) Section 2(1) and section 8 of the Act, so far as they relate to a storage activity, do not apply to a qualifying person before the deferred date (but this is subject to the condition in paragraph (2)).

(a) 2008 c.32.
(b) 1998 c. 17; section 26 was amended by section 78(3) of the Energy Act 2008.

(2) The condition is that, within 12 months of the commencement date, an application is made to the Secretary of State for a licence in respect of that storage activity.

(3) If the application is refused, the Secretary of State must specify (in a written notice of refusal given to the applicant) the date by which the storage activity must cease.

(4) In this article—

(a) “storage activity” means—

(i) the use of a controlled place for the storage of gas;

(ii) the recovery of gas stored in a controlled place; or

(iii) the maintenance in a controlled place of an installation for the purposes of the storage or recovery of gas;

(b) “qualifying person” means a person who, immediately before the commencement date, is carrying on the storage activity;

(c) “deferred date” means—

(i) the date on which the licence that is applied for comes into effect; or

(ii) if the application is refused, the date specified in accordance with paragraph (3); and

(d) “licence” means a licence under section 4 of the Act.

Transitional provisions: Food and Environment Protection Act 1985

4.—(1) Paragraph (2) applies where—

(a) immediately before the commencement date a person holds a FEPA licence for the deposit of a substance or article in the sea or under the sea-bed (“a licensed deposit”); and

(b) that deposit is made in the course of carrying on an activity within section 2(3) of the Act.

(2) Notwithstanding the provisions of the Act commenced by this Order, a licence under section 4 of the Act is not required for that deposit (but this is without prejudice to the requirement for such a licence in respect of any operation, such as the recovery of stored gas, that does not consist in the making of a licensed deposit).

(3) However—

(a) nothing in paragraph (2) affects any requirement for a licence under section 4 of the Act in respect of the drilling of a well or borehole; and

(b) paragraph (2) ceases to apply if, on or after the commencement date, the FEPA licence is varied, expires or is revoked.

(4) In this article—

(a) a reference to a licence under section 4 of the Act includes a reference to a consent given under such a licence; and

(b) “FEPA licence” means a licence required by section 5 of the Food and Environment Protection Act 1985^(a).

Lord Hunt of Kings Heath OBE

Minister of State

Department of Energy and Climate Change

20th October 2009

(a) 1985 c. 48; section 5 was amended by sections 146 and 162 of, and Part 8 of Schedule 16 to, the Environmental Protection Act 1990 (c. 43), and by Part 2 of Schedule 1 to the Statute Law (Repeals) Act 1993 (c. 50).

EXPLANATORY NOTE

(This note is not part of the Order)

Article 2 of this Order brings into force Chapter 2 of Part 1 of the Energy Act 2008 (importation and storage of combustible gas), and brings into force Schedule 1 to the Act so far as not already commenced. However, those provisions are not commenced so far as they relate to the unloading of gas to a pipeline, or to the establishment or maintenance of an installation for that purpose so far as it consists in apparatus, works or services associated with the operation of a pipeline.

The commencement date is 13th November 2009.

Article 3 contains transitional provisions concerning gas storage activities carried on immediately before that date. Such activities can, for the time being, continue to be carried on without a licence under section 4 of the Act, provided that an application for such a licence is made within one year of the commencement date.

Article 4 contains transitional provisions relating to operations already licensed under Part 2 of the Food and Environment Protection Act 1985 (“FEPA”). Such operations continue to be permitted as long as the FEPA licence continues in force without being varied. This is, however, without prejudice to the requirement for a licence under section 4 of the Energy Act 2008 for any operation not authorised by the FEPA licence, and does not apply in any event to any requirement for consent to the drilling of a borehole or well.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the Energy Act 2008 have been brought into force by a commencement order made before the date of this Order—

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No.</i>
Section 1	6th April 2009	2009/45 (C. 4)
Sections 17 to 35	6th April 2009	2009/45 (C. 4)
Section 36 (partially)	6th April 2009	2009/45 (C. 4)
Section 37 (remainder)	1st April 2009	2009/45 (C. 4)
Section 38 (partially)	26th January 2009	2009/45 (C. 4)
Section 38 (remainder)	7th March 2009	2009/559 (C. 38)
Section 39	26th January 2009	2009/45 (C. 4)
Section 40	26th January 2009	2009/45 (C. 4)
Sections 41 to 43	26th January 2009	2009/45 (C. 4)
Section 44(1), (2) and (4)	20th May 2009	2009/1270 (C. 68)
Sections 45 to 68	6th April 2009	2009/45 (C. 4)
Sections 69 to 71	6th April 2009	2009/45 (C. 4)
Sections 72 to 74	26th January 2009	2009/45 (C. 4)
Section 75	26th January 2009	2009/45 (C. 4)
Section 76	26th January 2009	2009/45 (C. 4)
Section 77 and Schedule 3	26th January 2009	2009/45 (C. 4)
Sections 78 to 82	6th April 2009	2009/45 (C. 4)
Section 83	26th January 2009	2009/45 (C. 4)
Section 87	26th January 2009	2009/45 (C. 4)
Sections 92 to 93	1st April 2009	2009/45 (C. 4)
Section 94	26th January 2009	2009/45 (C. 4)
Sections 95 to 96	1st April 2009	2009/45 (C. 4)

Section 97	26th January 2009	2009/45 (C. 4)
Section 98	26th January 2009	2009/45 (C. 4)
Section 100	26th January 2009	2009/45 (C. 4)
Section 101	26th January 2009	2009/45 (C. 4)
Section 103	26th January 2009	2009/45 (C. 4)
Section 104 (remainder)	26th January 2009	2009/45 (C. 4)
Section 105 (remainder)	26th January 2009	2009/45 (C. 4)
Section 107 (remainder)	26th January 2009	2009/45 (C. 4)
	1st April 2009	
	6th April 2009	
Section 108 (partially)	26th January 2009	2009/45 (C. 4)
	1st April 2009	
	6th April 2009	
Section 109	26th January 2009	2009/45 (C. 4)
Schedule 1, paragraphs 1 to 3, 6, 7 (except for paragraph 7(d), and for paragraph 7(h) so far as it relates to paragraph (a) of the definition of “gas”), 8, 12 and 13	6th April 2009	2009/45 (C. 4)
Schedule 5, paragraphs 2, 4, 6, 9 to 14, 15(a) and 15(b), 16 and 21	26th January 2009	2009/45 (C. 4)
Schedule 5, paragraphs 3, 15(c), 19 and 20	1st April 2009	2009/45 (C. 4)
Schedule 5, paragraphs 1, 7, 8, 17 and 18 (remainder)	6th April 2009	2009/45 (C. 4)
Schedule 6 (partially)	26th January 2009	2009/45 (C. 4)
	1st April 2009	
	6th April 2009	

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£4.00