

Overview of the Energy Act 2004

Application

Commencement and scope	<p>Received Royal Assent on 22 July 2004.</p> <p>Comes into force on days to be appointed by the Secretary of State. Different parts will come into force at different times. The first commencement order was made on 26 July 2004.</p> <p>Applies to Great Britain and Northern Ireland (with some exceptions).</p>
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Nuclear

Nuclear decommissioning	<p>Establishes the Nuclear Decommissioning Authority (NDA) as a new public body to ensure the decommissioning and clean-up of Britain's nuclear sites. Detailed provisions cover its constitution, functions, duties, powers and financial responsibilities.</p> <p>Gives the Secretary of State power to make nuclear transfer schemes for the transfer of publicly owned assets to the NDA, a publicly owned company or other consenting person.</p>
Nuclear security	<p>Extends the Anti-terrorism, Crime and Security Act 2001 to the regulation of the security of uranium enrichment technologies and sensitive nuclear information.</p> <p>Establishes the Civil Nuclear Police Authority to oversee a reconstituted civil nuclear constabulary. The Civil Nuclear Constabulary is to protect licensed nuclear sites that are not used wholly or partly for defence purposes and to safeguard nuclear material in Great Britain and elsewhere. Stop and search powers under the Terrorism Act 2000 are extended to the constabulary.</p>
Nuclear liability	<p>Gives the Secretary of State power to amend legislation to facilitate ratification of international protocols relating to liability for nuclear damage, or to exercise options under such a protocol.</p>

Renewable energy

Offshore electricity generation from wind and water	<p>Creates a legal framework for designating areas outside the territorial sea as "Renewable Energy Zones". Renewable Energy Zones are intended to provide greater legal certainty for offshore installations generating electricity from wind or water close to but beyond the UK's territorial water and to give the Government power to regulate those installations.</p> <p>Provides for extension of the operation of UK civil and criminal laws to activities on, under or above offshore renewable energy installations.</p> <p>Extends the definition of "generation" in the Electricity Act 1989 to generation in the territorial sea and in Renewable Energy Zones.</p>
Safety zones for offshore generation	<p>Gives the Secretary of State power to declare safety zones around offshore renewable energy installations to secure the safe installation, construction, extension or decommissioning of installations and other installations in the vicinity, safety of individuals on offshore renewable installations and safety of vessels in the vicinity.</p> <p>Enables activities to be specified and prohibited in safety zones. In all cases vessels are prohibited from entering or remaining in safety zones except with permission. Enables a process to be specified for granting vessels permission (subject to conditions) to enter or remain in safety zones.</p>

Section 36 consents	Extends section 36 of the Electricity Act (requiring Secretary of State consent for construction, extension and operation of generating stations) to offshore generating stations.
Navigation rights	<p>Provides for navigation rights to be extinguished, suspended or restricted in section 36 consents for renewable energy installations situated in the territorial sea.</p> <p>Prevents the grant of section 36 consents for offshore generating activities likely to cause interference with the use of recognised sea lanes essential to international navigation.</p> <p>Requires the extent and nature of any obstruction or danger to navigation likely to be caused or result from offshore generating activities to be considered before giving a section 36 consent and in formulating the conditions of the consent..</p>
Offshore transmission and distribution	<p>Gives the Secretary of State power to amend the standard conditions of transmission licences or distribution licences (and the codes and code participation agreements made under those licences) for purposes connected with offshore transmission and distribution.</p> <p>Provides for offshore transmission licences to be awarded on a competitive basis using a process to be established by GEMA and approved by the Secretary of State.</p>
Transmission charge adjustment schemes	Provides for schemes to reduce transmission charges in areas in Great Britain that are particularly suited to renewable generation but where development may be deterred by the level of transmission charges. The shortfall in transmission revenue is to be made up by adjustment to charges in areas not covered by the scheme. These schemes can only apply within 10 years of commencement of the section.
Decommissioning offshore renewable installations	Provides for development, review and implementation of decommissioning programmes for offshore renewable energy installations and related electric lines. Decommissioning programmes require approval by the Secretary of State, which may be subject to conditions.
Renewables Obligation	<p>Facilitates the introduction of the renewables obligation in Northern Ireland and provides for mutual recognition of renewables obligation certificates (ROCs) issued by Ofgem and Ofgem.</p> <p>Makes technical changes to the renewables obligation to provide for discharge of the obligation even where payment is late.</p> <p>Allows for orders to be made to safeguard the renewables obligation buyout fund from supplier default by enabling any shortfall in payments to be recovered from other electricity suppliers subject to the obligation. The Renewable Power Association and the DTI are sponsoring a study of possible mechanisms to be implemented under these new powers.</p>
Sustainable energy report	Extends the Secretary of State's obligations under the Sustainable Energy Act 2003 to publish a sustainable energy report. The report is to include information about steps taken to achieve energy efficiency aims designated under the 2003 Act and to promote development, use and scientific and engineering expertise in relation to specified technologies (some renewables, clean coal, coal mine methane and microgeneration) and other technologies expected to reduce CO ₂ emissions. This is in addition to the information already required by the 2003 Act about progress towards cutting carbon emissions, maintaining reliability of energy supplies, promoting competitive energy markets and reducing fuel poverty.
Micro-generation	Provides for publication and implementation by the Secretary of State of a strategy for promotion of microgeneration in Great Britain. Microgeneration includes plant producing electricity or heat with capacity that does not exceed 50kW and 45kW respectively, and using sources of energy or technology listed in the Act (renewables and CHP) and other technologies expected to reduce CO ₂ emissions.

RTF Obligation

Provides for the imposition by way of order (RTF Order) of a renewable transport fuel obligation (RTF Obligation) applicable to transport fuel suppliers. The RTF Obligation would require the transport fuel supplier to produce evidence that it had supplied for transport purposes (that is, for use by vehicles, vessels, aircraft, trains and other modes of transport) a specified amount of renewable transport fuel during a specified period. The RTF Order may provide for discharge of the RTF Obligation by payment of a buy-out price.

Defines renewable transport fuels to cover fuel produced from biomass (biofuel), blends of biofuel and fossil fuel, fuel produced from renewable sources or by a process powered by energy from renewable sources (wind, solar heat, water including waves and tides, geothermal and biomass) and any other fuel designated by an RTF Order as a renewable transport fuel.

Provides for the issue of tradeable certificates evidencing supply of renewable transport fuel. The certificates may be produced as evidence of compliance with the RTF Obligation.

The Secretary of State may, but is not required to, impose an RTF Order. The mechanism is one option for implementation of Directive 2003/30/EC on the promotion of biofuels or other renewable fuels for transport. The Department for Transport has recently been consulting on implementation of that Directive.

Energy markets and regulation

BETTA

Provides for implementation of the British Electricity Trading and Transmission Arrangements (BETTA). BETTA is designed to promote the creation of a single competitive wholesale electricity market in Great Britain and to introduce a single set of arrangements for access to and use of any transmission system in Great Britain.

Allows the Secretary of State to amend licences to implement BETTA.

Amends the activities relating to transmission of electricity for which a licence is required under the Electricity Act and allows the Secretary of State to determine new standard conditions for electricity transmission licences and to direct GEMA to issue a new transmission licence, in each case for the purposes of implementing BETTA.

Interconnector licensing (electricity and gas)

Creates a new category of interconnector licence under each of the Electricity Act (for electricity interconnectors) and the Gas Act 1986 (for gas interconnectors).

Provides for the Secretary of State to determine new standard conditions for interconnector licences. The DTI is currently carrying out a consultation on these licence conditions and the proposed regime for "switching off" licence conditions.

Extends GEMA's concurrent jurisdiction with the Office of Fair Trading under the Enterprise Act 2002 to electricity interconnectors.

Supply licences

Extends the definition of "supply" in the Electricity Act to include the supply of electricity to premises from a substation to which it has been conveyed by means of a transmission system. The Electricity Act formerly defined "supply" as supply of electricity conveyed by a distribution system to premises. The Energy Act retains the carve-out for supply to premises occupied by a licence holder for the purpose of carrying on its licensed activities.

**Energy
administration
orders**

Creates an administration regime for “protected energy companies” - that is, the holders of electricity transmission or distribution licences and gas transporter licences. A court has the power, on application by the Secretary of State or GEMA, to appoint an energy administrator to manage the affairs of the licence holder and to secure that the need for the administration order falls away.

Restricts insolvency proceedings, including administration and winding up, being taken in relation to a company subject to an energy administration order.

Requires creditors, lenders and others to give notice to the Secretary of State and GEMA of winding up proceedings, administration applications and intention to enforce security.

Provides for the Secretary of State to give grants, loans, indemnities and guarantees in connection with an energy administration order.

Enables gas and electricity licences to be amended to give effect to the energy administration order regime. In particular, the modifications may require licence holders to raise funds through their charges to be used to pay the costs of an energy administration, including repayment of amounts paid out by the Secretary of State by way of financial support for the administration.

Security of supply

Requires the Secretary of State to publish and lay before Parliament each year a report dealing with the availability, over both the short and long term, of electricity and gas for meeting the reasonable demands of consumers in Great Britain. The report will cover, in relation to Great Britain, generation capacity, capacity in electricity transmission and distribution networks, capacity in gas pipeline systems, terminals and other gas facilities and capacity in licensed gas networks.

Requires the report to be prepared jointly by the Secretary of State and GEMA.

This section is the compromise reached on earlier proposals to give the Secretary of State a broad duty to ensure security of supply.

**Sustainable
development**

Amends the duties of the Secretary of State and GEMA under the Gas Act and the Electricity Act to include a requirement that they carry out their functions in a manner best calculated to “contribute to the achievement of sustainable development”. This amendment is the result of a compromise over an earlier proposal to make promotion of renewable energy the primary duty of GEMA.

**Regulatory best
practice**

Inserts a new duty in both the Gas Act and the Electricity Act applicable to GEMA and the Secretary of State, requiring them in carrying out functions under those Acts to have regard to the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases where action is needed and any other principle which appear to the Secretary of State or GEMA to represent the best regulatory practice.

A similar duty applies to OFCOM under the Communications Act 2003 and to Ofwat under the Water Industry Act 1991. These principles of best regulatory practice were formulated by the Better Regulation Task Force.

**Appeals against
GEMA's decisions**

Establishes an appeals mechanism to allow energy market participants to contest Ofgem's decisions on code modifications. Grounds for allowing appeals are limited and include failure to have regard to statutory duties, where the decision was based on an error of fact or where the decision was wrong in law.

Provides for licences to be amended to enable the Secretary of State to impose charges to fund the costs of the Competition Commission in connection with appeals against code and licence modification decisions.

**Extraterritorial
operation**

Amends both the Gas Act and the Electricity Act to provide for acts or omissions constituting an offence under the Act to be treated as such even where committed outside Great Britain.

Petroleum Act 1998

Amends the Petroleum Act 1998 to require the Secretary of State to take into account offshore electricity generation, transmission, distribution and supply activities in territorial waters and Renewable Energy Zones when exercising or performing powers and duties under the Petroleum Act.

Gives the Secretary of States power to amend the Petroleum Act by order to give effect to international agreements relating to the construction, operation, use, decommissioning or abandonment of a pipeline or offshore installation.

**Charges by the
Secretary of State**

Gives the Secretary of State power to impose charges for services and facilities provided in exercising energy functions and for exercising those functions (such as considering applications and issuing licences).

The relevant energy functions of the Secretary of State for this purpose include those under the Petroleum Act, the Pipe-lines Act 1962, the Electricity Act, the Gas Act, the Pollution Prevention and Control Act 1999 and the Energy Act itself, as well as functions under other specified Acts and any Community instruments relating to onshore and offshore exploration, transportation and production of energy.

This overview of the Energy Act 2004 is a summary of the main provisions and is not intended to be comprehensive nor to provide legal advice. If you would like more information about the Act or require legal advice on any areas it covers, please contact a member of our energy team.

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