

The Energy Act 2008

April 2009



The Energy Act 2008 was given Royal Assent on 26 November 2008 and extends (with a few exceptions) to the whole of the UK, including Northern Ireland.

The Act implements the legislative aspects of the 2007 Energy White Paper: 'Meeting the energy challenge' which sets out the Government's international and domestic energy strategy both in the near future and in the long term.

The principal objective of the Act is to update the legislative framework to make it more appropriate for today's energy market. It seeks to:

- reflect the availability of new technologies (such as Carbon Capture & Storage (CCS) and emerging renewable technologies);
- correspond with changing requirements for security of supply infrastructure (such as offshore gas storage); and
- ensure adequate protections for the environment and the tax payer as our energy market changes.

Together with the Climate Change Act 2008 (and the Planning and Energy Act 2008 although this extends to England only) the Energy Act 2008 is a step towards achieving the Government's long term energy and climate change strategy.

Key Provisions

1. Offshore Gas Supply Infrastructure

Gas production in the UK's continental shelf is declining and it is expected that by 2020 the UK will be reliant upon imported gas to meet over 50% of its demand. As the UK's current offshore legislative regime was chiefly designed for licensing oil and gas production it does not support the type of supplies we expect to rely on in the future.

The Act creates a new regulatory framework for offshore gas storage and liquefied gas unloading projects thus enabling private sector investment in the type of supplies of energy required for future consumption.

A licence is required for the use of a controlled place for gas storage or unloading, the recovery of the gas stored, the conversion of natural features for use as storage space and related exploration activities. A controlled place is any place within the limits of the territorial sea adjacent to the UK or within a gas importation and storage zone. Land is not included within the definition of a controlled place for England, Wales or Scotland, however this exception does not extend to Northern Ireland and so it appears that a licence is required where any of the aforementioned activities take place on land in Northern Ireland.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

2. Carbon Capture and Storage (CCS)

CCS is a process involving the capture of carbon dioxide from the burning of fossil fuels and its storage in secure places, such as old oil and gas fields in the seabed. It has the potential to reduce the carbon emissions from fossil fuel power stations by up to 90%.

As CCS is a novel activity, existing legislation is not adequately suited to licensing the storage of carbon dioxide. The Act establishes a regulatory framework for licensing CCS activities thus enabling the private sector to invest in CCS projects. The framework is limited to the offshore area.

A consultation document was issued by the government in April 2008 and closed on 22 September 2008. This consultation sought views on several aspects of the regulation of Carbon Capture and Storage. Specifically, it consulted on aspects of the proposed EU Directive on the Geological Storage of Carbon Dioxide and invites views on the principle of 'carbon capture readiness' for combustion plants and the regulation of Carbon Dioxide storage. The government issued its response to the consultation document in April 2009 and outlined proposals for a new regime for new coal-fired power stations. Coal emits more CO₂ per unit of electricity produced than all other forms of generation. As global use of coal as a fuel for electricity generation is expected to increase over the coming decades, there is an urgent need to develop technologies that tackle emissions.

The proposals were set out in more detail in A Framework for the Development of Clean Coal: consultation document, published on 17 June 2009. This set out the UK's intention to invigorate global action on CCS as well as bringing direct benefits to the UK by placing the UK firmly at the forefront of a technology area that could develop into a multi-billion global market. It was informed by the independent Committee on Climate Change Advice that Government should make it clear that coal power stations should not operate unabated beyond the 2020s.

3. Electricity from Renewable Sources

The Renewables Obligation (RO) was introduced in 2002 and is designed to incentivise the generation of electricity from eligible renewable sources throughout the UK. The RO places an obligation on licensed electricity suppliers in the UK to source an increasing proportion of electricity from renewable sources. Suppliers meet their obligations by presenting Renewables Obligation Certificates (ROCs) and where they do not have sufficient ROCs to cover their obligation, they must make a payment into the buy-out fund. The proceeds of the buy-out fund are paid back to suppliers in proportion to how many ROCs they have presented.

The Act aims to strengthen the Renewables Obligation in order to increase the diversity of the UK's electricity mix which in turn should improve the reliability of our energy supplies and help lower the carbon emissions from the electricity sector.

4. Feed-in Tariffs

Provision has been made in the Act to enable the Government to introduce a tailor-made scheme to financially support low carbon generation of electricity in projects up to 5MW. The aim is that generators will receive a guaranteed payment for generating low carbon electricity.

This provision does not extend to Northern Ireland.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

5. Decommissioning of Energy Installations

Provision is made in the Act to strengthen statutory decommissioning provisions to ensure that the person with the obligation of decommissioning nuclear, offshore renewables and oil and gas installations, meets the cost of doing so. This should minimise the risk of liabilities falling to the Government.

6. Offshore Electricity Transmission

At present there is very little electricity network infrastructure installed offshore. The Department of Energy and Climate Change (DECC) and Ofgem are working jointly to develop a new regulatory regime for offshore electricity transmission to connect significant amounts of renewable offshore generation to the GB onshore grid.

The Act amends powers in order that Ofgem is able to run the offshore transmission licensing scheme more effectively.

7. Smart Metering

Smart meters allow energy suppliers to communicate directly with their customers, removing the need for meter readings and ensuring entirely accurate bills with no estimates. Among other potential benefits, they could offer gas and electricity customers accurate bills and provide information that could help them use less energy and encourage energy efficiency.

The Government has announced that smart meters will be rolled-out to all domestic customers by the end of 2020. The Energy Act 2008 contains provision to allow the Secretary of State to modify electricity and gas distribution and supply licences requiring the licence holder to install smart meters to customers.

This provision does not extend to Northern Ireland.

8. Renewable Heat Incentive

The Act makes provision to allow the Secretary of State to establish a financial support mechanism for renewable heat, from large industrial sites down to the household level. The aim is to introduce a 'banded' system, similar to that for the Renewables Obligation.

This provision does not extend to Northern Ireland.

9. Other Provisions

The Act makes various other provisions including:

- changes to the regime for petroleum licences;
- changes to the existing third party access dispute resolution procedures in relation to upstream oil and gas infrastructure and oil processing facilities;
- nuclear security;
- the duties of Ofgem;
- transmission access, powers and costs relating to network connections; and
- transfer of various regulatory functions to the DECC.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.

Commentary

The Energy Act 2008 deals with a wide range of issues from nuclear decommissioning to carbon capture and storage. It reflects the availability of new technologies and enables private sector development of offshore storage of gas and offshore electricity transmission. Whilst offshore development will initially be a huge financial investment it does have the potential to reap even larger rewards in terms of security of supply and reducing carbon emissions.

The development of schemes such as feed-in tariffs, smart metering and the renewable heat incentive will benefit domestic consumers and small businesses and the Act makes provision to enable the Government to implement such schemes. However, as noted above, none of these provisions extend to Northern Ireland but it is not unforeseeable that similar provision will be extended to Northern Ireland in the future.

Cleaver Fulton Rankin's Energy team is recognised by the Chambers UK Guide in Energy and Natural Resources as a "sharp commercial team", praising it for "combining a good transactional sense with a knowledge of the customs and machinations of the local system". In particular, Cleaver Fulton Rankin can advise on the following:

- construction and financing of wind farms;
- planning and environmental advice;
- licensing for mineral exploration and excavation;
- generating and supply contracts; and
- regulatory advice.

If you require any further information please contact Karen Blair or Maria O'Loan.

Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.