Energy Law in the United Kingdom

PATRICIA PARK





Energy Law in the United Kingdom

Patricia Park

This book was originally published as a monograph in the International Encyclopaedia of Laws/Energy Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Kurt Deketelaere Associate Volume Editor: Bram Delyaux



Published by: Kluwer Law International PO Box 316 2400 AH Alphen aan den Rijn The Netherlands Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by: Aspen Publishers, Inc. 7201 McKinney Circle Frederick, MD 21704 United States of America Email: customer.service@aspenpublishers.com

Sold and distributed in all other countries by: Turpin Distribution Services Ltd. Stratton Business Park Pegasus Drive, Biggleswade Bedfordshire SG18 8TQ United Kingdom Email: kluwerlaw@turpin-distribution.com

DISCLAIMER: The material in this volume is in the nature of general comment only. It is not offered as advice on any particular matter and should not be taken as such. The editor and the contributing authors expressly disclaim all liability to any person with regard to anything done or omitted to be done, and with respect to the consequences of anything done or omitted to be done wholly or partly in reliance upon the whole or any part of the contents of this volume. No reader should act or refrain from acting on the basis of any matter contained in this volume without first obtaining professional advice regarding the particular facts and circumstances at issue. Any and all opinions expressed herein are those of the particular author and are not necessarily those of the editor or publisher of this volume.

Printed on acid-free paper.

ISBN 978-90-411-4023-4

This title is available on www.kluwerlawonline.com

© 2012, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA. Email: permissions@kluwerlaw.com

Printed and Bound by CPI Group (UK) Ltd, Croydon, CR0 4YY.

The Author



Patricia Park is Professor of Environmental Law and Head of the Law Research Centre at Southampton Solent University. She has written extensively, and given conference papers, in the areas of energy and environmental law including papers for a number of House of Commons Committees. She has also carried out work for the Advisory Board on Sentencing to the Court of Appeal. Her latest book is *Energy Law and the Environment* (2001), Taylor and Francis, London and New York.

She was appointed as an original member of the Regional Environmental Pollution Advisory Committee to the Environment Agency in 1996. She was elected as

a Member of the Commission on Environmental Law of the IUCN (the World Conservation Union) in 1995, and is a Member of the Energy and Natural Resources section of the International Bar Association. She is a Fellow of the Energy Institute, and has been a Justice of the Peace since 1982.

She has carried out research for international oil companies, Local Authorities and the UK Government in addition to joint research for the Trilateral Committee for the Waddensea. She has engaged herself in research with universities in Sweden, Germany, Bulgaria, and France.

The Author	3
List of Abbreviations	13
Introduction	15
Chapter 1. General Background: Geography and Population	15
Chapter 2. Legal and Political Structure	17
Chapter 3. Role of Government Institutions	19
§1. Department for Environment, Food and Rural Affairs (DEFRA)	19
§2. DEPARTMENT FOR BUSINESS INNOVATION & SKILLS	19
§3. PARLIAMENTARY SELECT COMMITTEES	20
§4. ROYAL COMMISSION ON ENVIRONMENTAL POLLUTION (RCEP)	21
§5. THE ENVIRONMENT AGENCY I. Background II. Agency Functions III. National Standards and Targets and the Agency IV. Environmental Surveillance by the Agency	21 21 22 23 23
§6. LOCAL AUTHORITIES I. Town and Country Planning II. Air Pollution III. Contaminated Land IV. Noise Control	24 24 24 25 25
§7. THE UNITED KINGDOM ATOMIC ENERGY AUTHORITY (UKAEA)	25
§8. THE COAL AUTHORITY	25
	5

I. Functions and Duties	26
§9. THE OFFICE OF THE GAS AND ELECTRICITY MARKETS (OFGEM)	27
Chapter 4. Policy Issues	28
§1. CARBON CAPTURE AND STORAGE (CCS)	28
§2. Introducing Mandatory Social Price Support	29
§3. FAIRNESS OF ENERGY MARKETS	29
Chapter 5. The Interrelationship between Environmental and Energy Policy	30
§1. CARBON DIOXIDE EMISSIONS	30
§2. Other Greenhouse Gas Emissions	3(
§3. SULPHUR EMISSIONS	31
§4. Renewables	31
§5. COMBINED HEAT AND POWER PROJECTS	32
§6. LOCALISED IMPACTS	32
Chapter 6. United Kingdom Energy Resource Base	33
§1. HISTORY OF THE RESOURCE BASE	34
§2. Overview by Sector	35
Selected Bibliography	37
Part I. The Electricity Supply Industry	39
Chapter 1. The Structure of the Industry	39
\$1. THE PARTICIPANTS I. England and Wales II. Scotland III. Northern Ireland	39 39 40 40
Chapter 2. The Market Structure	40

§1.	ENGLAND AND WALES	42
§2.	SCOTLAND	43
§3.	NORTHERN IRELAND	43
§4.	THE INTERCONNECTORS	43
§5.	GENERATION	44
§6.	TRANSMISSION	44
§7.	DISTRIBUTION	45
Ch	apter 3. Regulation of the Industry	46
§1.	THE STATUTORY STRUCTURE I. Part II II. Part III	46 47 47
§2.	THE REGULATORY BODIES FOR THE ELECTRICITY SUPPLY INDUSTRY I. The Secretary of State II. The Secretary of State and the Director III. General Duties of the Secretary of State and the Director A. The Supply of Electricity B. Financial Matters C. Promoting Competition D. General Considerations IV. Scotland V. Northern Ireland	47 48 48 49 49 49 50 50
Ch	apter 4. The Licensing Regime	52
§1.	THE GRANT OF LICENCES	52
§2.	THE LICENCE	52
§3.	THE GENERATION LICENCE	52
§4.	THE TRANSMISSION LICENCE	53
§5.	PUBLIC ELECTRICITY SUPPLY LICENCES	53
86.	SECOND-TIER SUPPLY LICENCES	54

7. Exemptions from Licensing				
§8. Modification and Enforcement				
§9. REVOCATION OF A LICENCE				
Chapter 5. The Powers and Duties of Public Electricity Suppliers	58			
Chapter 6. The Sale and Purchase of Electricity	59			
§1. OPERATION OF THE POOL	59			
§2. Inherent Problems in the System				
§3. The New System	61			
§4. Possible Distortions of the Generation Market	62			
§5. THE SALE OF ELECTRICITY TO CONSUMERS	63			
§6. The Protection of Consumers	63			
§7. THE ELECTRICITY MARKET REFORM WHITE PAPER	64			
Chapter 7. Regulation of Competition in the United Kingdom	65			
§1. Powers of the Director and the Director General of Fair Trading	65			
§2. Monopoly References under the Fair Trading Act 1973	65			
§3. Competition Act 1998	65			
§4. New Competition Law Compliance Guidance	66			
Part II. The Gas Supply Industry	69			
Chapter 1. From Public to Private Ownership	69			
Chapter 2. Regulation of the Gas Supply Industry	70			
§1. Director General	70			

§2. Duties	70
§3. THE DUTY TO SECURE COMPETITION I. Statutory Third-Party Access to Onshore Pipelines	71 71
Chapter 3. The Licensing Regime for the Gas Supply Industry	72
§1. Types of Licence	72
§2. The Network Code	73
Chapter 4. The Competitive Market for Gas	75
§1. Competition Policy	75
§2. Over-supply and the Incentive for a Spot Market	75
Part III. Regulation of the Oil Industry	77
Chapter 1. General Regulatory Framework	77
Chapter 2. The Licensing Regime in the UK	80
§1. Ownership of Petroleum	80
§2. THE LEGAL BASIS OF LICENSING	80
§3. APPLICATION OF CRIMINAL LAW TO THE UK CONTINENTAL SHELF	81
§4. APPLICATION OF THE CIVIL LAW TO THE UK CONTINENTAL SHELF	82
§5. LICENCES I. Background II. The Model Clauses III. The EC Hydrocarbons Directive IV. Types of Licence V. Government Policy	83 83 83 85 86 87
Chapter 3. Pollution Control	89
81 THE IDDC DIDECTIVE AND OFFICE INSTALLATIONS	90

§2. THE ENVIRONMENTAL ASSESSMENT DIRECTIVE	89
Chapter 4. Health and Safety Offshore	91
§1. THE <i>PIPER ALPHA</i> DISASTER AND BEYOND I. Main Recommendations	91 93
Chapter 5. Decommissioning of Offshore Installations	94
Chapter 6. The <i>Brent Spar</i> I. The OSPAR Commission II. Disposal on Land III. Post-decommissioning Surveys and Monitoring IV. Residual Liability	97 98 99 100 101
Chapter 7. Licences for Landward Areas	102
§1. LEGAL CHARACTERISTICS OF THE LICENCE I. The Licence As a Contract II. The Law Governing the Licence	102 102 103
§2. AMENDMENTS TO THE LICENCE TERMS I. General Amendments II. Amendment of Individual Licences III. Revocation of a Licence	103 103 104 105
Part IV. Regulatory Framework Concerning Coal	107
Chapter 1. Historical Development	107
§1. Ownership	107
§2. NATIONALISATION OF THE COAL INDUSTRY	108
§3. GOVERNMENT POLICY	109
Chapter 2. Coal Production and the Environment	110
§1. ACID RAIN	110
§2. Global Warming	111
§3. Sustainable Development and Coal	111
Chapter 3. From Public to Private Ownership	113

Table of Content	I	a	b	le	of	Con	ten	ts	š
------------------	---	---	---	----	----	-----	-----	----	---

§1. Liability for Subsidence	114
§2. PROTECTION OF THE ENVIRONMENT	114
Chapter 4. Mining As an Act of Development	116
§1. THE HISTORIC ENVIRONMENT	117
§2. THE ENVIRONMENTAL DUTY	118
§3. Periodic Reviews	118
Chapter 5. Abandoned Coal Mines	120
§1. LIABILITY FOR POLLUTION	120
§2. Definitions	121
Chapter 6. Contaminated Land	123
§1. DESIGNATION	123
§2. LIABILITY I. Contamination, Successors in Title, and Statutory Successors	124 124
§3. EXCLUDED ACTIVITIES AND LENDERS' LIABILITY	125
§4. ORPHAN SITES	126
Part V. Interaction between Energy Law and Tax Law	127
§1. Introduction	127
§2. ROYALTIES	127
§3. CURRENT INTERNATIONAL: TAXATION OF UK OIL PRODUCTION I. Petroleum Revenue Tax II. Ring Fence Corporation Tax III. Supplementary Charge on Ring Fence Trades IV. Administration	128 128 129 129
§4. THE CLIMATE CHANGE LEVY	130
§5. Energy Intensive Sectors and Climate Change. Agreements	130

Part VI. Interaction between Energy Law and Competition Law	133
Chapter 1. Introduction	133
Chapter 2. Legal Context	134
§1. THE COMPETITION ACT 1998	134
§2. Community Law: Section 60	135
§3. EC DIRECTIVES	135
 I. EC Directive Concerning Common Rules for the Internal Market in Electricity (Directive 96/92/EC) II. EC Directive Concerning Common Rules for the Internal 	135
Market in Natural Gas (Directive 98/30/EC) III. The Fair Trading Act 1973	135 136
Chapter 3. Economic Analysis	137
§1. CHARACTERISTICS SPECIFIC TO THE GAS AND ELECTRICITY SECTOR I. Market Definition A. Duration B. Combined Effect of Duration and Magnitude C. Related Markets D. The Assessment of Market Power E. Assessment of whether an Abuse Has Occurred F. Assessment of whether a Dominant Incumbent is Engaging in Pre-emptive Behaviour G. Assessment of Agreements between Undertakings, Decisions by Associations of Undertakings and Concerted Practices under the Chapter 1 Prohibition	137 139 139 139 141 141 142 143
Chapter 4. The Provisions of the Enterprise Act 2002	145
Index	147

Energy Law in the United Kingdom

Patricia Park

This book was originally published as a monograph in the International Encyclopaedia of Laws/Energy Law.

General Editor: Roger Blanpain Associate General Editor: Michele Colucci Volume Editor: Kurt Deketelaere Associate Volume Editor: Bram Delyaux



The Author



Patricia Park is Professor of Environmental Law and Head of the Law Research Centre at Southampton Solent University. She has written extensively, and given conference papers, in the areas of energy and environmental law including papers for a number of House of Commons Committees. She has also carried out work for the Advisory Board on Sentencing to the Court of Appeal. Her latest book is *Energy Law and the Environment* (2001). Taylor and Francis, London and New York.

She was appointed as an original member of the Regional Environmental Pollution Advisory Committee to the Environment Agency in 1996. She was elected as

a Member of the Commission on Environmental Law of the IUCN (the World Conservation Union) in 1995, and is a Member of the Energy and Natural Resources section of the International Bar Association. She is a Fellow of the Energy Institute, and has been a Justice of the Peace since 1982.

She has carried out research for international oil companies, Local Authorities and the UK Government in addition to joint research for the Trilateral Committee for the Waddensea. She has engaged herself in research with universities in Sweden, Germany, Bulgaria, and France.

The Author

The Author	3
List of Abbreviations	13
Introduction	15
Chapter 1. General Background: Geography and Population	15
Chapter 2. Legal and Political Structure	17
Chapter 3. Role of Government Institutions	19
§1. Department for Environment, Food and Rural Affairs (DEFRA)	19
§2. DEPARTMENT FOR BUSINESS INNOVATION & SKILLS	19
§3. PARLIAMENTARY SELECT COMMITTEES	20
§4. ROYAL COMMISSION ON ENVIRONMENTAL POLLUTION (RCEP)	21
§5. THE ENVIRONMENT AGENCY I. Background II. Agency Functions III. National Standards and Targets and the Agency IV. Environmental Surveillance by the Agency	21 21 22 23 23
§6. LOCAL AUTHORITIES I. Town and Country Planning II. Air Pollution III. Contaminated Land IV. Noise Control	24 24 24 25 25
§7. THE UNITED KINGDOM ATOMIC ENERGY AUTHORITY (UKAEA)	25
§8. The Coal Authority	25

5