



# Scottish Law Commission

(SCOT. LAW COM. No. 49)

## ELECTRICITY (SCOTLAND) BILL

### REPORT ON THE CONSOLIDATION OF CERTAIN ENACTMENTS RELATING TO ELECTRICITY IN SCOTLAND

*Presented to Parliament by the Lord Advocate  
by Command of Her Majesty  
May 1978*

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THE SCOTTISH LAW COMMISSION

REPORT OF THE CONSOLIDATION OF CERTAIN  
ENACTMENTS RELATING TO ELECTRICITY IN  
SCOTLAND

*To The Right Honourable Ronald King Murray, Q.C., M.P.,  
Her Majesty's Advocate*

The Electricity (Scotland) Bill which is the subject of this Report consolidates various enactments relating to electricity in Scotland. In order to facilitate a satisfactory consolidation we are making the recommendations set out in the Appendix to this Report.

All our recommendations are intended to remove anomalies. Some of them are certainly not of 'substantial importance' and could therefore have been dealt with as 'corrections and minor improvements' under the Consolidation of Enactments (Procedure) Act 1949. But others, though not of great importance, cannot unhesitatingly be placed in this class.

The Scottish Economic Planning Department have been consulted and agree with our recommendations.

J. O. M. HUNTER

Chairman of the Scottish Law Commission

*22 March 1978*

## APPENDIX

### RECOMMENDATIONS

#### *Constitution and Functions of New Scottish Electricity Board established by Order of the Secretary of State*

1. Section 4(2) of the Electricity Act 1947, as originally enacted, provided *inter alia* for the creation of new Area Boards by order of the Minister of Fuel and Power. Subsection (5) provided *inter alia* that any such new Board 'shall be established in accordance with the foregoing provisions of this Act—'. The foregoing provisions of the 1947 Act related to the functions of Area Boards (sections 1 and 2) and their constitution (section 3). These provisions applied to the South West Scotland Electricity Board and the South East Scotland Electricity Board which were established by the 1947 Act as Area Boards (section 1 and Schedule 1). They also applied to the North of Scotland Hydro-Electric Board by virtue of section 4(7). When the South of Scotland Electricity Board was established in place of the South West and South East Boards under the Electricity Reorganisation (Scotland) Act 1954, that Act amended section 4(7) to provide that section 4(2) applied to both the South and the North Boards and that power to make the appropriate order was given to the Secretary of State for Scotland. The 1954 Act also repealed section 3 of the 1947 Act (Constitution of Area Boards) in its application to Scotland. The effect of these amendments was that the Secretary of State could establish by order a new Electricity Board for any part of Scotland. Any such new Board required 'to be established in accordance with' sections 1 to 3 of the 1947 Act and in relation to the South Board and its district, in accordance with the provisions of the 1954 Act. It follows that if a new Board is established by order of the Secretary of State in respect of any part of the South district, that new Board will have the constitution and functions of the South Board as provided in the 1954 Act. However, the position in respect of a new Board established in respect of a part of the North district is that it requires to be established in accordance with sections 1 and 2 of the 1947 Act, that is with various miscellaneous functions and no constitution, section 3 of the 1947 Act having been repealed.

In our opinion, the effect of these provisions is that an order made by the Secretary of State establishing a new Board in Scotland would have different results depending on whether any part of the district of the new Board was part of the South district or part of the North district, in the one case having functions different from the other and, in the case of it being part of the South district, having a constitution, and in the case of it being part of the North district not having a constitution. We consider this result to be anomalous. In our opinion, the proper solution is to provide that any such new Board is constituted in accordance with Schedule 1 of the Bill which applies to both Boards and with the functions of the South Board. Both Boards have been consulted and agree. We so recommend.

Effect is given to this recommendation in clause 2(2) and paragraph 5 of Schedule 2 of the Bill.

#### *Authorisation to supply electricity in another area or district where the agreement of the other Board concerned cannot be obtained*

2. Subsections (4) and (5) of section 1 of the 1947 Act as amended by the 1954 and 1957 Acts provide that either of the Boards can seek the authority of the Electricity Council to supply electricity to consumers in any part of the area of an Area Board and of the Secretary of State to supply electricity to consumers in any part of the district of the other Board, where they have been unable to obtain the agreement of the other Board. Provision to this effect is contained in subsection (4) in the following terms 'They may apply to the Electricity Council for an authorisation to supply electricity to consumers in such part of the area of that other Area Board as may be specified in the authorisation—'. It is clear, in our opinion, that the area of the other Board in respect of which the application is made requires to be specified in the application made by the Board and not in the authorisation to be given by the Council or the Secretary of State as the case may be. The Boards have been consulted and confirm that this is the case. We accordingly recommend that 'application' should be substituted for 'authorisation' where it last occurs in the above quotation.

Effect is given to this recommendation in clause 8(2) of the Bill.

In our opinion this amendment could properly have been proposed under the Consolidation of Enactments (Procedure) Act 1949.

### *Powers of entry on land*

3. Two different sets of provisions enabling the Boards to enter on land for the purpose of making surveys are presently in force. Section 3(a) of and paragraph 3 of Schedule 3 to the 1943 Act as amended by the 1954 Act enable the Boards to make surveys for the purposes of constructional schemes and otherwise to ascertain the water power and peat resources of any part of their districts and for those purposes to authorise any person to enter on the land in question after giving not less than 7 days notice and subject to payment of reasonable compensation for any damage caused. Section 35 of the Electricity Act 1957 provides that the Boards may enter upon and survey any land (with some minor exceptions) for the purpose of ascertaining whether it would be suitable for use for the purposes of any functions of the Board. Under section 35, 28 days notice of the intended entry has to be given to the occupier of the land and where any damage is caused to land or to moveables or any disturbance to enjoyment is caused, any person interested may recover compensation from the Board and where any question of disputed compensation arises provision is made for that to be determined by the Lands Tribunal for Scotland. The 1957 Act did not repeal section 3(a) of the 1943 Act expressly although having regard to the broad terms of section 35 there is room for the view that it did by implication. In our opinion, it is anomalous that there should be two different sets of provisions dealing with rights of entry each with different periods of notice and different provisions as to compensation. The Boards have been consulted and do not object to the principle of the provisions in the 1943 Act and the 1957 Act being brought into line. In our opinion, the provisions contained in section 35 of the 1957 Act should apply generally to rights of entry exercised by the Boards. This appears to have been the intention of the 1957 Act. We so recommend.

Effect has been given to this recommendation in clause 13 of the Bill.

### *Directions as to the use and disposal of certain assets*

4. Section 5(4) of the 1947 Act as applied to Scotland by section 5(7) and as amended by Schedule 1 Part II of the 1954 Act provides that the Secretary of State may after consultation with the Boards give them directions as to the use and disposal of certain assets vested in the North Board under the 1947 Act and the South Board under the 1954 Act. No provision is expressly made in respect of assets vested in the North Board under the 1943 Act. As respects England section 5(4) was repealed by the 1957 Act and re-enacted in general terms in section 8(3) of that Act. In our opinion, the omission of an express reference to assets vested in the North Board under the 1943 Act results in an anomaly as there appears to be no good reason why those assets should not be subject to a direction of the Secretary of State in the same way as assets vested in that Board under the 1947 Act or in the South Board under the 1954 Act. We recommend that section 5(4) of the 1947 Act in its application to Scotland should be re-enacted in general terms to apply to all the relevant assets of the Scottish Boards.

Effect is given to this recommendation in clause 34(4) of the Bill. In our opinion this amendment could properly have been proposed under the Consolidation of Enactments (Procedure) Act 1949.

### *Offences*

5. Section 61(1) of the 1947 Act provides *inter alia* that any person who makes a false statement in making any claim or giving any notice for the purposes of any provision of that Act shall be guilty of an offence. The 1943 Act and the 1954 Act contain no such provision. Section 61 applies to statements made and notices given in relation to the compulsory purchase of land, pension rights and financial assistance in relation to research, being provisions contained in the 1947 Act and re-enacted in the Bill in clauses 12, 15 and 38. Section 61 does not apply to provisions in the Bill deriving from the 1943 Act such as those re-enacted in clause 11 of the Bill (Acquisition of land for the purpose of a constructional scheme). In our opinion, this is anomalous and the provision relating to offences should apply to all the provisions of the Bill. The Boards have been consulted and agree. We so recommend.

Effect is given to this recommendation in clause 42(1) of the Bill.

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