

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

ENERGY ACT 2011

EXPLANATORY NOTES

INTRODUCTION

1. These Notes relate to the Energy Act 2011 which received Royal Assent on 18 October 2011. They have been prepared by the Department of Energy and Climate Change (DECC) in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. These Notes should be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW OF THE STRUCTURE OF THE ACT

3. The Act is in five parts:
 - Part 1: Energy efficiency.** Improving energy efficiency by tackling barriers to investment in energy efficiency through the Green Deal and measures to maximise its uptake; introducing powers for a new Energy Company Obligation from 2012 to complement and work in tandem with the Green Deal; making energy performance data from Energy Performance Certificates more widely available; extending powers to direct the roll out of smart meters; and conferring powers to require cheapest tariff information to be included on energy bills.
 - Part 2: Security of energy supplies.** Enhancing energy security through better monitoring of future electricity security; strengthening market incentive mechanisms for ensuring sufficient gas is available during a Gas Supply Emergency; improving third party access to UK oil and gas infrastructure; putting in place a Special Administration Regime for gas and electricity suppliers; and maximising the UK's ability to exploit the UK Continental Shelf.
 - Part 3: Measures for reducing carbon emissions.** Enabling implementation of the enduring offshore electricity transmission regime beyond 2010, giving investors in the new nuclear sector increased certainty as to their obligations and making provision in respect of the decommissioning of infrastructure converted for carbon capture and storage demonstration projects and pipe-lines for conveying carbon dioxide.
 - Part 4: Coal Authority.** Extending the power of the Coal Authority in relation to offering and charging for services relating to non-coal mining activities.
 - Part 5: Miscellaneous and General.** Including the repeal of the Home Energy Conservation Act (HECA) 1995; extent; commencement; and the short title.

SUMMARY AND BACKGROUND

4. The Act implements elements of: *The Coalition's programme for Government*¹ the first *Annual Energy Statement*² published on 27 July 2010 and the *Carbon Plan*³ published

¹ http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdf insert link

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on 8 March 2011, which set out the Government's plans to support the UK's transition to a secure, safe, low-carbon, affordable energy system, and to mobilise commitment to ambitious action on climate change internationally.

5. The Act is underpinned by three policy objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and facilitating investment in low carbon energy supplies.
6. The majority of the Act is made up of provisions to enable the financing and facilitation of the installation of energy efficiency measures in homes and businesses – the 'Green Deal' – with the remainder of the Act dealing with securing fair competition in energy markets and the supply of low carbon energy.

TERRITORIAL EXTENT AND APPLICATION

7. This Act extends to England and Wales, Scotland and Northern Ireland, as described below.
8. All provisions of the Act apply to Wales, except for section 113 (on extending the renewable heat incentive to Northern Ireland) and provisions that deal with Scotland separately from England and Wales (the separate Scottish provision relates to the Green Deal, the Private Rented Sector, the energy performance certificates register, and powers of the Coal Authority).
9. The provisions relating to the introduction of a renewable heat incentive for Northern Ireland extend to Northern Ireland. The provisions relating to the continental shelf, nuclear decommissioning and nuclear security (all of which are reserved in respect of Northern Ireland) extend to Northern Ireland.
10. The Act extends to Scotland, except for section 113 (on extending the renewable heat incentive to Northern Ireland), and provisions which amend legislation which does not itself extend to Scotland (see for example section 106, which contains provisions on decommissioning nuclear sites), or where provisions deal with England and Wales separately from Scotland.
11. In Part 1, aspects of the Green Deal (Chapter 1), Private Rented Sector (Chapter 2) and Energy Company Obligation (Chapter 4) may relate to devolved matters, as may section 75 in Chapter 5 (access to register of energy performance certificates: Scotland) and the provisions about the Coal Authority's functions in Part 4. Parts 2 and 3 relate to reserved matters in Scotland. The repeal of the Home Energy Conservation Act (Part 5) is devolved to Scotland.
12. The Scottish Parliament's consent has been sought for the provisions in the Act that trigger the Sewel Convention. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.

² http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/aes/aes.aspx

³ http://www.decc.gov.uk/en/content/cms/what_we_do/lc_uk/carbon_plan/carbon_plan.aspx

COMMENTARY ON SECTIONS

Part 1: Energy Efficiency

Chapter 1: Green Deal

Introductory

Section 1: Green Deal plans

13. This section sets out what constitutes an ‘energy plan’ and a ‘green deal plan’. An energy plan is an arrangement made by the occupier or owner of a property for making energy efficiency improvements to that property. A green deal plan is an energy plan where the energy efficiency improvements are to be paid for wholly or partly by instalments and the requirements of subsection (4) are met at the time the plan is made.
14. *Subsection (4)* sets out the requirements that a green deal plan must meet. These include that: the property is eligible; the energy efficiency improvements are ‘qualifying energy improvements’; the conditions relating to assessment of the property have been met; the conditions relating to the terms of the plan are met; and a relevant energy supplier supplies the property.
15. Energy efficiency improvements will only be ‘qualifying energy improvements’ if they have been specified as such in an order made by the Secretary of State.
16. *Subsection (6)* explains that payments under a green deal plan are to be made by the person who is for the time being liable to pay the energy bills for the property. This person is referred to as the ‘bill payer’ (section 2(3)). *Subsection (6)* also says that payments should be made to the relevant energy supplier through the energy bills for the property, are recoverable as a debt from the bill payer and are recovered and held by the relevant energy supplier as agent and trustee for the person who made the improvements (unless the relevant energy supplier is also that person). *Subsection (7)* confirms that the requirement to make payments applies to the bill payer irrespective of whether he was the person who entered into the green deal plan. *Subsection (5)* confirms that the arrangements in subsection (6) will only apply if: the improvements have been installed in accordance with section 7; the green deal plan has been confirmed in accordance with section 8; and the requirements imposed by virtue of sections 9 and 10 are met.
17. *Subsection (8)* says that subsection (6) is subject to the provision made in section 34 (power of the Secretary of State to deal with special circumstances) and any suspension or cancellation of liability by virtue of provision made in regulations under sections 3(3)(h) or (i), 6(4) or 16 (sanctions and redress) or section 35 (appeals).
18. Under *subsection (9)*, a property will be an eligible property unless it falls within a description specified in an order made by the Secretary of State.

Section 2: Green deal plans: supplementary

19. *Subsection (2)* defines ‘improver’ and ‘green deal provider’. *Subsection (3)* defines ‘bill payer’ by reference to section 1(6)(a).
20. *Subsections (4) to (6)* define the range of measures that fall within the meaning of ‘energy efficiency improvements’ and may, therefore, be eligible as ‘qualifying energy improvements’. *Subsection (4)* includes measures for improving efficiency in the use of electricity or gas conveyed through pipes or any other source of energy specified in an order made by the Secretary of State, together with any measures falling within subsections (5) or (6).
21. *Subsection (5)* defines other measures for increasing the amount of electricity generated or heat produced by microgeneration or by using low-emissions sources or technologies and also measures for reducing the consumption of the types of energy mentioned in

subsection (4). *Subsection (6)* provides for the inclusion of measures in green deal plans which are installed for the purpose of supplying to the property: electricity generated to produce heat or a cooling effect; heat produced in association with electricity; steam produced from heat; or gas or liquid subjected to a cooling effect produced in association with electricity.

22. The measures referred to in subsections (5) and (6) will only be eligible if they are specified as such in an order made by the Secretary of State.
23. *Subsection (9)* confirms that the meaning of ‘energy’, ‘energy bill’, ‘occupier’, ‘owner’ and ‘relevant energy supplier’ will be defined in regulations made by Secretary of State.
24. *Subsection (10)* enables the Secretary of State, when making regulations under subsection (9), to make provision in those regulations in respect of circumstances where someone who is not a bill payer for the purposes of Chapter 1 may be treated as such.

Section 3: Framework regulations

25. This section requires the Secretary of State to establish, in regulations, a scheme for authorising persons to act as green deal assessors, green deal providers and green deal installers and regulating the conduct of these ‘green deal participants’.
26. *Subsection (3)* contains a non-exhaustive list of the provision that may be made by the scheme. In particular, this includes provision for: requiring the payment of a fee in connection with authorisation under the scheme; the issuing of a code of practice; requiring green deal participants to enter into a multi party agreement; requiring the Secretary of State to approve that agreement; requiring green deal participants to comply with the code of practice; securing compliance with the scheme, code or agreement; and provision as to the consequences of non-compliance. It also includes provision for the establishment and maintenance of a register of green deal participants and those whose authorisation under the scheme has been withdrawn, and for requiring green deal participants to provide information.
27. *Subsection (4)* details what the code of practice may provide for, for example: the qualification and training of green deal participants; the handling of queries or complaints; green deal assessors acting with impartiality; insurance; charging; and marketing.
28. *Subsection (5)* allows the code to include provision for regulating a body specified or authorised for the purposes of subsection (1)(a) and *subsection (6)* allows the scheme and code to make different provision for different circumstances or cases.
29. *Subsection (8)* provides examples of the provision which the Secretary of State may make for securing compliance with the scheme code or agreement mentioned in subsection (3). For example, the Secretary of State may: require a green deal provider to cancel or suspend a bill payer’s liability to make payments under a green deal plan; require a green deal participant to rectify a qualifying energy improvement or its installation; or require a green deal participant to pay compensation or a financial penalty. The Secretary of State may also make provision enabling the Secretary of State to withdraw a green deal participant’s or body’s authorisation.
30. *Subsection (9)* states that a qualifying assessment is an energy efficiency assessment which meets the requirements of the framework regulations and deals with such other matters as specified in those regulations.

Green Deal plan

Section 4: Assessment of the property etc

31. This section sets out the conditions that must be met in order for a green deal plan to be taken out at a property. The conditions include those listed in subsections (2) to

(9) and such other conditions as the Secretary of State may specify in the framework regulations.

32. *Subsection (2)* makes it a condition that a qualifying assessment has been carried out by a person authorised to act as a green deal assessor. *Subsection (3)* makes it a condition that a green deal assessor has recommended the energy efficiency improvements. *Subsection (4)* makes it a condition that the green deal provider has given an estimate of the energy bill savings that are likely to be made if the improvements are carried out. *Subsection (5)* requires the green deal provider to give an estimate of the period over which the improvements are likely to generate the savings mentioned in subsection (4).
33. *Subsection (6)* makes it a condition that the green deal provider is authorised to act as a green deal provider. *Subsection (7)* requires the green deal provider to have offered to carry out the improvements on the basis that the cost will be paid for in instalments.
34. *Subsections (8) and (9)* set conditions as to the relationship between the estimated total amount of the proposed instalments to be paid and the estimated energy bill savings that the improvements will generate, as well as the relationship between the period for which instalments will be paid and the estimated time period over which the energy bill savings will be delivered. The nature of these relationships will be specified in the framework regulations.

Section 5: Terms of plan etc

35. This section sets out the requirements relating to the terms of green deal plans. *Subsections (2) to (4)* impose three conditions in respect of the terms of green deal plans. The first condition is that the green deal plan must include the terms listed in subsection (2). For example, the plan must include a condition in which the improver agrees to the amount of the instalment payments and the frequency with which those payments must be made. The plan must also include a term in which the improver confirms that any necessary permissions or consents have been obtained in respect of the improvements.
36. There must also be a term which states that the green deal provider may not take a charge over a property by way of security for the payments and a term which makes it clear that the green deal plan does not prevent the bill payer from changing the intervals at which energy bills are paid.
37. The second condition is that green deal plans must not include any of the terms mentioned in subsection (3). For example, the plan must not include a term making a bill payer liable to make payments under a green deal plan otherwise than in respect of the period for which a person is a bill payer in respect of that property. Also, the plan must not include a term requiring the bill payer to repay early either the whole or part of the amount outstanding under the plan, except to the extent allowed for by the framework regulations or regulations under section 34.
38. The third condition is contained in *subsection (4)*. The effect of this condition is to provide a 'cooling off period' of 14 days within which the consents and permissions envisaged by subsection (2) can be withdrawn.
39. *Subsection (1)(b)* enables the Secretary of State to specify other conditions in the framework regulations. *Subsection (5)* provides examples of the provision which may be made under subsection (1)(b) and includes: a term which enables bill payers to make early repayments of outstanding amounts under the green deal plan; a term which provides a guarantee in respect of the improvements; and a term which addresses how problems relating to the installed measures are to be resolved.
40. *Subsection (5)(d)* says that the framework regulations may make provision for the agreements mentioned in subsection (2)(a) to be in a specified form.

Section 6: Consents and redress etc

41. *Subsections (1) and (2)* state that the framework regulations may make provision for dealing with situations where, at the time the green deal plan is entered into, the energy bill payer and the improver are different persons, for example where a property owner is the improver and the occupier is the bill payer. In particular, the regulations may provide for it to be a term of the plan that the bill payer has consented to the green deal plan. The regulations may also make provision for circumstances where the bill payer at the time the green deal plan was entered into and the bill payer at any other time (known as the ‘subsequent bill payer’) are different. Subsection (1) is subject to section 1(6).
42. *Subsection (4)* enables the Secretary of State to provide for redress in cases where a permission or consent mentioned in section 5(2)(b) was not obtained or was obtained improperly. A non-exhaustive list of the types of redress which the Secretary of State may make provision for is set out in *subsection (5)*.

Section 7: Installation of improvements

43. This section sets out the conditions that need to be met for the installation of improvements. This includes requirements that: the person carrying out the improvements must be authorised as a green deal installer; the type of improvement being installed must meet the standard specified in the code of practice or be listed in a document issued by the Secretary of State and the carrying out of the installation of the improvements must meet the standard specified in the code of practice.

Section 8: Confirmation of plan

44. This section sets out the conditions that need to be met in order for a green deal plan to be confirmed in accordance with section 1(5)(b). *Subsections (2) and (3)* contain the first condition, which requires an energy supplier to notify the bill payer, within a time period set by the framework regulations, that payments for energy efficiency improvements are to be included in the energy bills for the property from a specified date, as well as the amount of those payments and time period to which those repayments relate.
45. *Subsection (4)* contains the second condition, which is that as soon as is practicable after the improvements have been installed, the green deal provider must ensure either that certain information about the green deal plan is included in a new type of document to be used by green deal providers specifically for this purpose or that such information is added to an existing document. The Secretary of State will specify which one or more of these actions are required in the framework regulations.

Section 9: Confirmation of plan: supplementary provision for England and Wales

46. This section makes further provision, relating to England and Wales, in respect of the second condition in section 8.
47. The provisions of this section apply if the Secretary of State specifies a document of a description which is required to be produced under the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (‘the 2007 Regulations’) or the Building Regulations 2010 (‘the 2010 Regulations’) for the purposes of subsection (4)(b) or (c) of section 8. If such a document is specified, *subsection (2)* enables the Secretary of State to make regulations amending the 2007 Regulations or the 2010 Regulations or both in connection with the document required to be produced or updated by virtue of subsection (4)(b) or (c) of section 8.
48. *Subsection (3)* allows the amendments to be made to the 2007 Regulations and/or the 2010 Regulations under subsection (2) to include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.

Section 10: Confirmation of plan: supplementary provision for Scotland

49. This section makes provision in relation to Scotland that is equivalent to that made by section 9 in respect of England and Wales. The provisions of this section apply if the Secretary of State specifies a document of a description which is required to be produced under the Energy Performance of Buildings (Scotland) Regulations 2008 ('the 2008 Regulations') for the purposes of subsection (4)(b) or (c) of section 8. *Subsection (2)* enables Scottish Ministers to amend the 2008 Regulations in connection with the document required to be produced or updated by virtue of subsection (4)(b) or (c) of section 8.
50. *Subsection (3)* allows the amendments to be made to the 2008 Regulations to include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.

Section 11: Updating information produced under section 8

51. *Subsection (1)* allows the framework regulations to make provision as to the circumstances in which a document produced under section 8(4)(a) is required to be updated.
52. *Subsection (2)* states that subsection (6) applies if one or more of the first, second or third conditions set out in subsection (3), (4) or (5) is met. The first condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2007 Regulations or the 2010 Regulations and provision has been made in either or both of those regulations under section 9(3) to require a document of that description to contain additional or updated information. The second condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2008 Regulations and provision has been made in the 2008 Regulations under section 10(3) to require a document of that description to contain additional or updated information. The third condition is that, pursuant to section 8(4)(b) or (c), the framework regulations specify a document of a description other than one falling within subsection (3) or (4).
53. *Subsection (6)* enables the framework regulations to make provision as to the circumstances in which a document of a description falling within subsection (3), (4) or (5) is required to be updated or further updated in accordance with provision made by the Secretary of State in the regulations.

Disclosure of green deal plan etc

Section 12: Disclosure of Green Deal plan etc in connection with sale or letting out

54. **Section 12** seeks to ensure that those who intend to buy a green deal property or let a green deal property under a tenancy or licence agreement are made aware of important information about the green deal plan.
55. *Subsections (1) and (2)* place a duty on those selling and letting out a green deal property to disclose the document required to be produced or updated under section 8(4), or each such document, to prospective buyers, tenants and licensees. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property. *Subsection (2)* requires that person to obtain the relevant document and then provide the document free of charge to the prospective buyer, tenant or licensee at the specified time.
56. *Subsection (3)* enables an obligation under subsection (2) to be discharged by an agent.
57. *Subsection (4)* defines a prospective buyer, tenant or licensee as someone who: requests any information about the property from the seller, prospective landlord or licensor or their agent for the purpose of deciding whether to buy or let the property; makes a

request to view the property for that purpose; or makes an oral or written offer to buy or let the property.

58. *Subsection (5)* defines an ‘agent’ as someone acting on behalf of a seller, prospective landlord or licensor and a ‘green deal property’ as a property with a green deal plan for which green deal payments are still to be made. It also defines the term ‘specified’ in relation to time meaning as specified in the regulations.
59. *Subsection (6)* enables the Secretary of State to specify the circumstances in which the duty in subsection (2) does not apply.

Section 13: Disclosure of Green Deal plan in connection with other transactions etc

60. **Section 13** enables the Secretary of State to make regulations specifying transactions or other arrangements not falling within section 12(1) in which information about the green deal plan must be disclosed in the manner provided for in section 13(2).

Section 14: Acknowledgement of Green Deal plan on sale or letting out

61. *Subsections (1) and (2)* place a duty on the seller, prospective landlord or prospective licensor of a green deal property to secure that the relevant written contract or licence or tenancy agreement includes an acknowledgement by the prospective buyer, tenant or licensee that the green deal plan is binding on the bill payer at the property. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property.
62. *Subsection (4)* requires that acknowledgment to be in a form specified by the Secretary of State in regulations in respect of properties situated in England or Wales. *Subsection (7)* provides an equivalent power for the Scottish Ministers in respect of properties in Scotland.
63. *Subsection (5)* states that the Secretary of State may, in regulations, specify cases or circumstances under which an acknowledgement is not required. *Subsection (8)* provides an equivalent power for the Scottish Ministers.

Section 15: Acknowledgement of Green Deal plan in connection with other transactions etc

64. **Section 15** enables the Secretary of State to make regulations specifying transactions or other arrangements not falling within section 14(1) in which an acknowledgment that the bill payer at the property is liable to make payments under the green deal plan and that certain terms are binding on the bill payer must be made.

Section 16: Sanctions for non-compliance with obligations under sections 12 to 15

65. This section allows the Secretary of State to make regulations to ensure that sellers, prospective landlords, prospective licensees and also those obligated under regulations made pursuant to sections 13 and 15 meet their disclosure and acknowledgement obligations. *Subsection (2)* contains a non-exhaustive list of the types of provision which the Secretary of State may make, including provision allowing for the imposition of civil penalties and provision to require a green deal provider to suspend or cancel the bill payer’s liability to make payments under a green deal plan.

Modifying energy licences etc

Section 17: Power to modify energy licences in connection with green deal payments

66. *Subsection (1)* provides the Secretary of State with a power to modify gas transporter, shipper and supply licences and electricity distribution and supply licences, including

standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents.

67. *Subsection (2)* limits the power in subsection (1) so that it may only be exercised for the purposes of: preventing the holder of the licence from permanently disconnecting the supply of gas or electricity to a green deal property (insofar as the power relates to licences under section 7 of the Gas Act 1986 and section 6(1)(c) of the Electricity Act 1989); and requiring or enabling licence holders to take, or not to take, specified action in connection with green deal payments.
68. *Subsection (3)* provides that the provision which may be made in connection with green deal payments may include: allowing a specified licence holder to opt-in or opt-out of the following requirements; requiring a licence holder to collect green deal payments through energy bills and pass them to a green deal provider; making provision for cases where a licence holder is required to make payment to a green deal provider but green deal payments which are due have not been made by the bill payer; provision in connection with the cancellation and suspension of green deal payments; and requiring or enabling payments to be made by or to a licence holder with respect to their obligation in connection with green deal payments.
72. *Subsection (4)* provides that licence modifications can include provision that where a bill payer has failed to pay a sum under an energy bill, the holder of the licence will be required to remit a proportion of any payment received to a green deal provider.
73. *Subsection (7)* defines payments as green deal payments if they are made under a green deal plan. It also defines a green deal property as a property where there is a green deal plan and payments are still to be made under that plan. References to the green deal provider in this section include references to someone acting on the green deal provider's behalf or nominated by a green deal provider.

Section 18: Power to modify energy supply licences to make provision as to default in green deal payments

74. *Subsection (1)* provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). *Subsection (2)* limits the power in subsection (1) so that it may only be used for the purpose of making provision for: the steps that must be taken by the holder of the licence following a bill payer's failure to make green deal payments; the circumstances in which a licence holder may disconnect the supply to a green deal property; and enabling, in certain circumstances, a licence holder to use a security deposit paid by the bill payer to pay green deal payments to the green deal provider.
75. *Subsection (3)* defines 'green deal payments' and a 'green deal property' by reference to section 17(7).

Section 19: Power to modify energy supply licences to require provision of information

76. *Subsection (1)* provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences, documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents).
77. *Subsection (2)* provides that the power in subsection (1) can be used for two purposes.
78. The first purpose, provided for in *subsection (3)*, is to require licence holders, at specified times, to provide bill payers with specified information in connection with their green deal plans.

79. The second purpose, provided for in *subsections (4) to (6)*, is to require licence holders to disclose specified information regarding the past payment of energy bills by the person who is or will be the bill payer on a property with a green deal plan.
80. *Subsection (6)* provides that the licence holder may only be required to disclose the requested information where (i) the request is made in connection with a green deal plan or proposed green deal plan; (ii) the green deal provider gives evidence that the bill payer has consented to disclosure of the information for these purposes; (iii) the information relates to a time within the 5 years immediately preceding the request; and (iv) the licence holder has the information.
81. *Subsection (7)* provides that licence modifications can require information to be provided in a specified manner or form, or subject to specified requirements or restrictions.

Section 20: Power to modify energy supply licences to make provision as to consumer protection

82. *Subsection (1)* provides the Secretary of State with powers to modify conditions incorporated in gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). *Subsections (2) and (4)* allow the modifications to make provision corresponding to that of the disappplied consumer protection legislation if it is made for the same purpose for which the disappplied consumer protection legislation was made. *Subsection (5)* stipulates that references to the ‘disappplied consumer protection legislation’ are to the provisions of the Consumer Credit Act 1974 which would have applied if the amendments made by section 26 had not been made.

Section 21: Powers under sections 17 to 20: consultation

83. This section stipulates that the Secretary of State, before making modifications under sections 17 to 20 must consult with the holder of any licence being modified, the Gas and Electricity Markets Authority (GEMA), and such other persons as the Secretary of State considers appropriate.

Section 22: Powers under section 17 to 20: supplementary

84. This section makes provision about the exercise of the powers to make licence modifications contained in sections 17 to 20. *Subsection (2)* allows the Secretary of State to exercise the power to introduce a modification either generally, in relation solely to specified cases or subject to exceptions, and allows the powers to make incidental, consequential or transitional modifications. The Secretary of State can also exercise this power differently in different cases or circumstances. *Subsection (3)* provides that the provisions included in licences by virtue of these powers need not relate to the activities authorised by the licence and may make different provision for different cases. *Subsection (4)* stipulates that the Secretary of State must publish details of modifications made under sections 17 to 20 as soon as is reasonably practicable after the modifications are made.
85. *Subsection (5)* says that a modification of a standard condition of a licence does not prevent any other part of that condition continuing to be regarded as a standard condition. *Subsection (6)* states that where a standard condition is modified, the condition, as modified, must be incorporated in licences granted after the time of the modification.

Gas and electricity codes

Section 23: Recovering green deal payments: gas suppliers

86. This section amends Schedule 2B to the Gas Act 1986 (the gas code) to give gas suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of gas and for a green deal plan, and to allow sums owed under a green deal plan to be collected from gas prepayment meters.
87. *Subsections (2) to (5)* contain the substitutions to be made in Schedule 2B to the Gas Act 1986.

Section 24: Recovering Green Deal payments: electricity suppliers

88. This section amends Schedules 6 and 7 to the Electricity Act 1989 (the electricity code) to give electricity suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of electricity and for a green deal plan, and to allow sums owed under a green deal plan to be collected from electricity prepayment meters.
89. *Subsections (2) to (6)* contain the insertions and substitutions to be made in Schedules 6 and 7 to the Electricity Act 1989.

Modifying consumer credit legislation

Section 25: Exemption from Consumer Credit Act 1974 in relation to credit to business debtors

90. This section amends section 16B of the Consumer Credit Act 1974 to provide that the Act does not regulate consumer credit agreements in the form of green deal plans where the agreement is exclusively for business purposes and the credit does not exceed a sum of £25,000.
91. *Subsections (2) to (4)* contain the insertions to the Act.

Section 26: Energy suppliers not to be treated as carrying on ancillary credit business

92. This section amends the Consumer Credit Act 1974 so as to exempt energy suppliers from the need to obtain an Office of Fair Trading licence in carrying out the functions required of them under the Green Deal.
93. Subsection (4) of section 21 of that Act exempts energy suppliers from the need for a licence where they are carrying out functions comprising or relating to debt-adjusting, debt-counselling, debt-collecting or debt administration, in relation to payments due under a green deal plan associated with the supplier.
94. Subsection (5) of that section specifies that a green deal plan is associated with a supplier where a supplier is collecting payments under that plan.
95. Subsection (6) of that section defines the terms ‘green deal plan’ and ‘relevant energy supplier’ by reference to sections 1 and 2 of this Act.

Section 27: Duties to give debtors information and statements.

96. This section amends sections 77, 77A and 77B of the Consumer Credit Act 1974 so that, in respect of green deal plans, the obligations placed on creditors to provide debtors with statements periodically and on request can be met by a third party acting on behalf of the creditor.
97. *Subsections (2) to (4)* contain the insertions to be made.

Section 28: Exemption from requirement to give notice of sums in arrears

98. This section amends section 86B of the Consumer Credit Act 1974 so that, in the context of green deal plans, creditors are exempt from the requirement to give debtors notice of sums in arrears. This section provides for subsection (12) of section 86B of the Consumer Credit Act 1974 to be replaced by new subsections (12) to (12B).

Section 29: Early repayment of Green Deal finance

99. The Consumer Credit Act 1974 already allows creditors to receive limited compensation in the event of a customer choosing to repay a credit agreement early. This section amends the Consumer Credit Act 1974 so that Green Deal Providers are able to receive compensation up to what is allowed under the Consumer Credit Directive. *Subsection (1)* of the new section 95B of that Act sets out the circumstances in which enhanced compensation is available. The rate of interest under the credit agreement must be fixed; the agreement must be a green deal plan which lasts for a specified duration; and the debtor must be discharging all or part of his indebtedness during the fixed rate period. *Subsection (2)* states that this compensation can only be claimed if the early repayment amount is not paid from the proceeds of a contract of payment protection insurance, and if the agreement satisfies other conditions that may be set out in regulations. *Subsection (3)* states that the amount claimed as compensation must be fair, objectively justified, and calculated in accordance with provision made in regulations. The amount claimed must also not exceed what the debtor would have paid in interest had the agreement not been repaid early. *Subsection (4)* allows the creditor to choose whether they wish to claim compensation from a customer under the existing Consumer Credit Act provisions in section 95A or under this new section 95B in circumstances where both provisions apply.
100. *Subsections (3) and (4)* of section 29 make consequential amendments to the Consumer Credit Act 1974.

Section 30: Power to amend Consumer Credit Act 1974

101. This section enables the Secretary of State, following consultation with the Office of Fair Trading and such other persons as the Secretary of State considers appropriate, to amend the Consumer Credit Act 1974 in consequence of the provision made by or under Chapter 1.

Delegation of functions

Section 31: Delegation and conferring of functions

102. *Subsection (1)* provides for the Secretary of State to delegate, by order, the exercise of certain functions to a public body specified in an order. If the function of issuing the code of practice is transferred to a public body, *subsection (2)* provides that the Secretary of State must approve the code before it is laid before Parliament. *Subsection (3)* provides that the Secretary of State must consent to the revocation of the code of practice. *Subsections (4) and (5)* enable the Secretary of State to make provision by order for functions in connection with administration of any provision in licences under sections 7 or 7A of the Gas Act 1986 or section 6(1)(c) or (d) to be conferred on the Secretary of State or a public body.
103. *Subsection (6)* provides that the order may specify different functions to be exercisable by different bodies and that the same functions may be exercised by different public bodies in relation to different areas. *Subsection (7)* enables the Secretary of State to make payments to any public body specified in an order made under subsection (1) of this section.

Section 32: Exercise of scheme functions on behalf of the Secretary of State or a public body

104. This section relates to functions connected with the scheme established by the framework regulations, pursuant to section 3.
105. *Subsection (2)* provides that the Secretary of State can arrange for such functions to be exercised by a body or person on the Secretary of State's behalf.
106. *Subsection (3)* enables a public body, to which such functions have been delegated under section 31, may also arrange for any person to exercise those functions on its behalf.
107. *Subsection (4)* makes it clear that any arrangements under this section do not affect responsibility for the exercise of the function, and may include provision for payments to the body or person exercising the function.

Section 33: Duty to report

108. This section provides the Secretary of State with an additional power where the function described is delegated to a public body. Where this is the case, the Secretary of State may make regulations which require the public body to collect information on specified matters and provide the Secretary of State with a report on those matters at a specified time.

General

Section 34: Power of Secretary of State to deal with special circumstances

109. *Subsection (1)* allows the Secretary of State to make regulations setting out: the circumstances in which a bill payer's liability to make green deal payments is suspended or cancelled; the circumstances in which the suspension of any liability ends; the consequences of any suspension or cancellation; and the circumstances in which the green deal provider may require the early repayment of the whole or part of the total of the payments outstanding under a green deal plan.
110. *Subsection (2)* states that the regulations may provide for: the procedure to be followed in order to secure a cancellation or suspension which may include the payment of an administration fee; how payments are to be paid which are due during and following a suspension period; and as to the calculation of the amount payable on early repayment.
111. *Subsection (3)* defines the 'bill payer' to include the person who would be bill payer if the supply were not temporarily disconnected or the liability to make green deal payments was not suspended and 'payments' as green deal payments if they are made under a green deal plan.

Section 35: Appeals

112. This section requires the Secretary of State to provide a right of appeal against any sanction imposed or other action taken by the Secretary of State (or a specified public body) under section 3(3)(h) or (i) (non-compliance with conditions or other requirements of the scheme, code or agreement), section 6(4) (redress where the permission or consent mentioned in section 5(2)(b) was not obtained or was improperly obtained) or section 16 (non-compliance with sections 12 to 15).
113. The right of appeal which the Secretary of State must provide for is a right of appeal to a court or tribunal (*subsection (2)*). *Subsections (3) and (4)* set out the provision which the Secretary of State may make in respect of the right of appeal including, in particular, provision as to the court's or tribunal's powers in respect of an appeal application. *Subsections (5) and (6)* enable the Secretary of State and Scottish Ministers respectively to revoke or amend any subordinate legislation for the purpose of or in consequence of

any provision falling within subsection (3)(a), (d), (f) or (g) (jurisdiction and powers of the court or tribunal, appeal procedure, and recovery of sums determined to be payable). The Scottish Ministers' power in subsection (6) is limited to making provision to revoke or amend subordinate legislation where making that provision would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

Section 36: Funding for energy efficiency advice

114. This section enables the Secretary of State to incur expenditure in providing advice or information about green deal plans or energy efficiency generally to individuals and organisations or in making payments to persons providing such advice or information.

Section 37: Preparatory expenditure: framework regulations

115. This section enables the Secretary of State to incur expenditure in preparing for a scheme provided for in section 3 before the framework regulations are made.

Section 38: Green deal installation apprenticeships

116. This section requires the Secretary of State to report to Parliament, before the first framework regulations are made, on any steps he has taken to encourage apprenticeships for installers of energy efficiency improvements.

Section 39: Parliamentary procedure in relation to code of practice

117. **Section 39** provides for the Parliamentary procedure in relation to code of practice under the framework regulations (i.e. under section 3(3)(d)).

Section 40: Regulations and orders

118. This section enables the Secretary of State, when making orders or regulations under Chapter 1, to make different provision for different cases or circumstances or for different purposes. It provides for orders and regulations, other than those made by Scottish Ministers, to be made by statutory instrument. Statutory instruments made by the Secretary of State are subject to the negative procedure, except in the case of statutory instruments containing the framework regulations, regulations under sections 2, 13, 15(1), 16, 34 or 35(2) or an order under sections 1, 2 or 30. These require the affirmative procedure. Regulations made by the Scottish Ministers under sections 10(2), 14(7) and (8) and 15(4) are subject to the negative procedure and regulations under section 35(6) are subject to the affirmative procedure.
119. *Subsection (8)* provides that the Secretary of State must consult Scottish Ministers in respect of any regulations or orders extending to Scotland, and that if the regulations or order contain anything within the legislative competence of the Scottish Parliament, Scottish Ministers' consent is required.
120. *Subsection (9)* provides that Welsh Ministers' consent is required to provision under section 35 which amends or revokes instruments made under a Measure or Act of the National Assembly for Wales, or any other subordinate legislation made by the Welsh Ministers. *Subsection (10)* provides that Welsh Ministers' consent is required before amending under section 9 a provision of the Building Regulations 2010 if and so far as the function under which the provision is made is exercisable by the Welsh Ministers. *Subsection (12)* provides that Welsh Ministers must be consulted on regulations or orders which apply to Wales.

Section 41: Crown application: Chapter 1

121. This section provides that Chapter 1 binds the Crown.

Chapter 2: Private Rented Sector (England and Wales)

Introductory

Section 42: Meaning of ‘domestic PR property’ and ‘non-domestic PR property’: England and Wales

122. This section provides the definition of ‘domestic private rented property’ and ‘non-domestic private rented property’ for the purpose of this Chapter.

Domestic energy efficiency regulations

Section 43: Domestic energy efficiency regulations

123. This section gives the Secretary of State powers to make domestic energy efficiency regulations in respect of England and Wales. Under this section, the Secretary of State must make regulations prescribing the circumstances in which a landlord must undertake relevant energy efficiency improvements before letting the property. *Subsection (1)* gives the Secretary of State the power to define the types of domestic property which are to be the subject of the obligation to make relevant energy efficiency improvements whilst *subsection (2)* describes the obligation placed upon a landlord.
124. *Subsection (4)* defines concepts such as “energy performance certificate”, “landlord” and “relevant energy efficiency improvements”. “Relevant energy efficiency improvements” are those which are of a description specified in the regulations and can be (i) financed wholly by a green deal plan, (ii) provided free of charge under a scheme provided for under section 33BC or 33BD Gas Act 1986 or sections 41A or 41B Electricity Act 1989 (a ‘supplier scheme’⁴), (iii) financed wholly by a combination of the green deal and subsidy under a supplier scheme, or (iv) financed under another specified financial arrangement. *Subsection (5)* provides the Secretary of State with the power to amend the definition of “energy performance certificate” if this is thought desirable or becomes necessary as a result of the source of the definition in the Energy Performance Regulations being amended. *Subsection (6)* places a duty on the Secretary of State to ensure that domestic energy efficiency regulations come into force no later than 1 April 2018.

Section 44: Further provision about domestic energy efficiency regulations

125. This section sets out further provisions that may be included in the domestic energy efficiency regulations. *Subsection (1)* describes how the regulations may make further provision: about the period within which the relevant energy efficiency improvements must be started or completed or may make provision granting exemptions from any requirements imposed by or under the regulations. Provision may also be made about how any requirement imposed by or under the regulations must be evidenced.
126. *Subsection (2)* provides further detail about the type of provision which may be made relating to exemptions. In this context, further provision may be made relating to the necessary permissions or consents which may be necessary before relevant energy efficiency improvements are permissible or about the likely negative impact on the value of a property of complying with the requirement to undertake relevant energy efficiency improvements. Under provision made under the power in this subsection, the Secretary of State could provide, for example, that a landlord is not required to make relevant energy efficiency improvements if he cannot obtain consent which is required to be given by his freeholder, or if the property is likely to be worth less as a result of the improvements being installed.

⁴ The schemes are currently the Carbon Emissions Reduction Target, provided for in the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (SI 2008/188) and the Community Energy Saving Programme, provided for in the Electricity and Gas (Community Energy Saving Programme) Order 2009 (SI 2009/1905). This will include the Energy Company Obligation in the future.

127. *Subsection (3)* sets out examples of the kind of further provision that may be made in regulations relating to the evidence required to demonstrate the application of an exemption or that a property falls outside the scope of any regulations made.

Section 45: Sanctions for the purposes of domestic energy efficiency regulations

128. This section enables the Secretary of State to make provision for the purpose of securing compliance by landlords with the requirements imposed on them. *Subsections (2) and (3)* provide that a local authority may enforce the requirements in the regulations and also that failure to comply with any requirements imposed by or under the regulations can lead to sanctions including the imposition of a civil penalty not exceeding £5,000.
129. *Subsection (4)* requires regulations to provide for a right of appeal to a court or tribunal against the imposition of a civil penalty and *subsections (5) to (8)* make further provision regarding appeals.

Tenants' energy efficiency improvements regulations

Section 46: Tenants' energy efficiency improvements regulations

130. This section gives the Secretary of State powers to make tenants' energy efficiency improvements regulations in respect of England and Wales. *Subsection (1)* requires the Secretary of State to make regulations for the purpose of ensuring that a landlord of a property caught by the regulations does not unreasonably refuse a tenant's request for the making of relevant energy efficiency improvements.
131. *Subsection (2)* describes the tenant's request which a landlord must not unreasonably refuse as a request for the consent to the making of such relevant energy efficiency improvements as are identified in the request.
132. *Subsection (4)* defines matters such as "landlord" and "tenant" and 'relevant energy efficiency improvements' in the same way as in subsection (4) of section 43. *Subsection (5)* requires the Secretary of State to ensure that the tenants' energy efficiency regulations come into force no later than 1 April 2016.

Section 47: Further provision about tenants' energy efficiency improvements regulations

133. *Subsection (1)* describes the further provision that may be included in the tenants' energy efficiency regulations. Regulations can deal with the form, content and service of the request by the tenant and the response from the landlord. They may also set out exemptions from any requirement imposed by or under the regulations. Provision may also be made about how any requirement imposed by or under the regulations must be evidenced.
134. *Subsection (2)* provides further detail about the type of provision which may be made relating to exemptions. In this context, further provision may be made relating to the necessary permissions or consents which may be necessary before relevant energy efficiency improvements are permissible or about the likely negative impact on the value of a property of complying with the requirement to undertake relevant energy efficiency improvements.
135. *Subsection (3)* sets out examples of the kind of further provision that may be made in regulations relating to the evidence required to demonstrate the application of an exemption or that a property falls outside the scope of any regulations made.

Section 48: Sanctions for the purposes of tenants' energy efficiency improvements regulations

136. *Subsection (1)* of this section enables the Secretary of State to make provision in the regulations for the purpose of securing that landlords comply with any requirements imposed by or under the tenants' energy efficiency improvements regulations.
137. *Subsection (2)* enables the Secretary of State to make provision for a tenant to make an application to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by the regulations.
138. *Subsections (3) to (8)* describe in greater detail the type of provision which the Secretary of State may make in relation to matters such as the tenant's application to a court or tribunal, the procedure for making such an application, the grounds upon which an application may be made, the powers of the court or tribunal and how a landlord or tenant may appeal against any decision of a court or tribunal.

Non-domestic energy efficiency improvements regulations

Section 49: Non-domestic energy efficiency regulations

139. This section is very similar to section 43 in that it requires the Secretary of State to make regulations for the purpose of ensuring that a landlord of a non domestic property of a type specified in the regulations does not let that property until the landlord has undertaken relevant energy efficiency improvements. It is a provision which applies to the non-domestic sector in a way which section 43 applies to the domestic sector. Accordingly, the discussion of the provisions of section 43 above apply to section 49.

Section 50: Further provision about non-domestic energy efficiency regulations

140. This section is materially identical to section 44 and therefore the discussion of the provisions of that section should be read here.

Section 51: Sanctions for the purposes of non-domestic energy efficiency regulations

141. This section enables the Secretary of State to make provision for the purpose of securing that landlords comply with the requirements imposed on them under non-domestic energy efficiency regulations. *Subsection (2)* provides that provision may be made enabling (i) a local weights and measures authority to enforce any requirement imposed by or under the regulations applying to landlords of non domestic properties; (ii) sanctions to be imposed for non compliance with any requirements imposed by or under the regulations and also for sanctions to imposed for the provision of false information. The section also makes clear that non compliance may be enforced by the imposition of a civil penalty by a local weights and measures authority.
142. *Subsections (3) to (7)* provide more detailed provision about a right of appeal to a court or tribunal against the imposition of a civil penalty.

General

Section 52: Regulations and orders: Chapter 2

143. This section enables the Secretary of State, when making orders or regulations under Chapter 2, to make different provision for different cases or circumstances or for different purposes. It provides for orders under sections 43(5) or 49(5) to be made by statutory instrument subject to the negative procedure. Statutory instruments containing an order under section 42(1)(a)(iii) or regulations under this Chapter are subject to the affirmative procedure.

144. *Subsection (5)* requires the Secretary of State to obtain the consent of Welsh Ministers before making provision under this Chapter where such provision will amend or revoke provision contained in a Measure or Act of the National Assembly of Wales. The requirement for consent under subsection (5) does not apply where the Secretary of State is making incidental or consequential provision; see subsection (6). *Subsection (7)* requires the Secretary of State to consult Welsh Ministers before making any domestic energy efficiency regulations or tenants' energy efficiency improvement regulations which apply to properties situated in Wales.

Section 53: Crown application: Chapter 2

145. This section provides that Chapter 2 binds the Crown.

Chapter 3: Private Rented Sector: Scotland

146. **Sections 54 to 65** in this Chapter makes provision for Scotland which is equivalent to that made in Chapter 2 for England and Wales. Scottish Ministers can choose whether or not to make Scottish energy efficiency regulations or Scottish tenants' energy efficiency improvement regulations. Consequently, Scottish energy efficiency regulations and Scottish tenants' energy efficiency regulations may come into force no earlier than 1 April 2015. Save for these differences the provisions for Scotland are intended to operate in the same way as for England and Wales giving Scottish Ministers similar powers to that given to the Secretary of State and described above for Chapter 2.

Chapter 4: Reducing Carbon Emissions and Home-Heating Costs

Summary and Background

147. This Chapter contains new and amended powers to create a future Energy Company Obligation (ECO), which the Government intends will replace, in time, the existing energy company obligations – the Carbon Emissions Reduction Target (CERT) (see the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (S.I. 2008/188, as amended)) and the Community Energy Saving Programme (CESP) (see the Electricity and Gas (Community Energy Saving Programme Order) 2009 (S.I. 2009/1905)) – when they end in December 2012. Broadly, the policy intention is to create a new obligation which draws on the framework underpinning the existing energy company obligations but also reflects a number of new developments as described below.
148. By the time CERT and CESP end in December 2012, the Green Deal financing framework is expected to have been put in place. The availability of Green Deal financing will represent a significant change to the policy landscape and one of the key objectives of the ECO will be to underpin the market-led Green Deal, helping to ensure that, as far as possible, all households can access energy efficiency measures.
149. By the time the new obligation is up and running, the energy efficiency needs of the housing stock in Great Britain will also have changed such that hard-to-treat properties will form a much larger proportion of the pool of homes remaining to be insulated. For example, there will be far fewer lofts and wall cavities remaining to be insulated, and of those remaining, a much larger proportion will be technically less straightforward to treat. This is in addition to the approximately 7 million homes in Great Britain that require some form of internal or external solid wall insulation. Green Deal finance alone is unlikely to meet the needs of installing more expensive improvements in hard to treat homes, and therefore part subsidising the installation costs through the ECO may serve to reduce the size and term of the repayments by the householder and so make these forms of energy efficiency improvements economically viable.
150. The ECO may also focus on support for low-income households and the most vulnerable in society. Some households in this category may require more support than just Green Deal finance if they are to improve their energy efficiency and reduce their fuel bills. Some of the types of measures which may help low-income households or those with individuals who are particularly vulnerable to the cold such as the elderly or

disabled, such as boiler repairs or new heating systems, will help to reduce the cost of heating a home but will not necessarily lead to energy efficiency or carbon savings. As a result it is difficult to incentivise such measures through a carbon or energy efficiency-based target using the existing enabling powers. The proposed new ECO powers will allow for an obligation to be set in such a way as to drive delivery of these measures too.

151. Many of the powers needed to establish the new ECO are contained in section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000. These existing powers enable the Secretary of State not only to set an overall carbon emissions reduction target, but also to require obligated energy companies to meet their individual targets by action taken in relation to specified types of people or specified geographical areas. However, these existing powers need to be amended to ensure that the new ECO will be effective in the evolving policy landscape described above.
152. In summary, Chapter 4 of Part 1 of the Act amends and adds to the existing enabling powers in section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000 which underpin the existing CERT and CESP Orders, so as to enable the Secretary of State to:
- impose a ‘home-heating cost reduction target’ alongside the carbon emissions reduction target (see sections 68 and 69);
 - require a carbon emissions reduction target or home-heating cost reduction target to be met (in whole or in part) by action taken in relation to specified types of individuals living in specified types of property or specified areas;
 - require specified information from energy companies for the purposes of assessing the effectiveness of a new obligation towards meeting its policy objectives (see section 71); and
 - provide that the administration and/or enforcement of the new obligation is to be carried out by either the Authority, a body other than the Authority or the Secretary of State (see for example the amendments made by section 66(3) and 67(3) to the Gas Act 1986 and Electricity Act 1989 respectively).

Section 66: Promotion of reductions in carbon emissions: gas transporters and suppliers

153. This section amends section 33BC of the Gas Act 1986 to include additional powers that will enable the Secretary of State to create a framework describing how the Energy Company Obligation must be achieved.
154. *Subsection (3)* enables the Secretary of State to provide that the administrative and enforcement functions of a new ECO are to be exercised by either GEMA, a body other than GEMA or the Secretary of State. Whilst the default position is for GEMA to be the Administrator for a new ECO, the Secretary of State is given a power by the provision inserted by section 66(3) to provide for another body or the Secretary of State himself to be the Administrator.
155. *Subsection (6)(a)* inserts new subsections (5)(bb) to (be) and (5)(c) into section 33BC. These new provisions have the effect of allowing a framework to be established within an Order that determines how an energy company may achieve its carbon saving obligation. Specifically, new subsections (5)(bb) and (bc) enable an order to require energy companies to deliver actions only to certain types of property or individual as directed by the Authority. New subsection (bd) allows the Secretary of State to make provision that requires energy companies to consult specified organisations – for example local authorities – as a condition of an action being eligible under the new obligation.

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

156. New subsection (5)(be) creates a provision designed to protect the integrity of the scheme. Energy companies may be required to meet two targets – a carbon emissions reduction target and a home-heating cost reduction target. The Secretary of State will have the power to prevent companies from counting a specific action against more than one of these two targets and therefore guards against the risk of double-counting.
157. The insertion of new subsection (5)(c) enables the Secretary of State to make provision determining how actions should be regarded as contributing towards the target which is set – for example, how the score for a measure or package of measures may be calculated.
158. *Subsection (6)(e)* inserts a new subsection (5)(g) which enables the Secretary of State to make provision requiring the Administrator or an alternative specified body to offer services to the obligated companies which, for example, may help them achieve the new obligation. The provision also enables the Administrator to charge a fee to those who take up the offer.
159. *Subsection (7)* makes further provision in respect of the situation envisaged in new subsection (5)(bc), see paragraph 158. The insertion of a new section (5A) will enable provision to be made authorising the Administrator to require specified persons to provide information to assist it to select individuals, to specify the criteria by which the Administrator should select individuals, to determine, or specify how the Administrator should determine which obligated companies should act in respect of a given individual. New subsection (5A) will also enable provision to be made which enables the Administrator to provide relevant information to an obligated company which will help the energy company to comply with a direction to assist a particular individual. Under new subsection (5A) it will also be able to make provision setting out the circumstances in which a direction may be given and the circumstances in which a direction need not be complied with.
160. Subsection (7) also inserts a new subsection (5B) into section 33BC that allows for the Secretary of State to provide that an action receives a greater score than it would otherwise do where it relates to individuals of a specified description, properties of a specified description, or a combination of those two criteria.
161. *Subsection (9)* inserts new subsections (7A) and (7B) into section 33BC both of which make provision about enforcement in circumstances where someone other than the Authority is appointed to be the Administrator. Powers are provided to enable a person other than the Authority to effectively enforce the new Energy Company Obligation.
162. *Subsection (11)* inserts two new subsections into section 33BC: new subsection (9A) allows the Secretary of State to make provision requiring the Administrator to produce guidance material to obligated companies whilst new subsection (9B) provides that the Secretary of State may issue general or specific directions to the Administrator, and that the Administrator should carry out its functions in accordance with any direction.
163. *Subsection (12)* makes provision reflecting the Scottish devolution settlement in its application to the powers of the Secretary of State under section 33BC of the Gas Act 1986. New subsection (10A) requires the Secretary of State to obtain the consent of Scottish Ministers before making an order which contains provision under section 33BC(2)(b) which will extend to Scotland and which is within the legislative competence of the Scottish Parliament.
164. *Subsection (13)* inserts a new subsection (12A) which in turn makes provision enabling the negative resolution procedure to apply in respect of amendments of a particular type which are made to an earlier order. (Section 64(15) helps to define the operation of new subsection (12A)). Prior to these amendments all orders under section 33BC were subject to the affirmative resolution procedure.
165. *Subsection (14)* inserts a definition of the ‘home-heating cost reduction target’.

Section 67: Promotion of reductions in carbon emissions: electricity generators, distributors and suppliers

166. This section amends section 41A of the Electricity Act 1989 in materially identical terms to the way in which section 66 amends section 33BC of the Gas Act 1986.
167. However, section 67(16) qualifies the power in section 41A so that the Secretary of State cannot impose an obligation on electricity generators which will have effect after 31st December 2012.

Section 68: Promotion of reductions in home-heating costs: gas transporters and suppliers

168. This section inserts new powers into the Gas Act 1986 to allow the Secretary of State to make an order which imposes on gas transporters and gas suppliers an obligation to achieve a ‘home-heating cost reduction target’.
169. **Section 68** inserts a new section 33BD into the Gas Act 1986. Subsection (2)(b) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 33BC of the Gas Act 1986 to orders made under the new section 33BD so as to create a similar framework for establishing a separate home-heating cost reduction target.

Section 69: Promotion of reductions in home-heating costs: electricity distributors and suppliers

170. This section inserts new powers into the Electricity Act 1989 to allow the Secretary of State to make an order which imposes on electricity distributors and electricity suppliers an obligation to achieve a ‘home-heating cost reduction target’.
171. **Section 69** inserts a new section 41B into the Electricity Act 1989. Subsection (2)(b) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 41A of the Electricity Act 1989 to orders made under the new section 41B so as to create a similar framework for establishing a separate home-heating cost reduction target.

Section 70: Overall home-heating cost reduction targets

172. This section inserts a new section 103A into the Utilities Act 2000 to confer a new power enabling the Secretary of State to create by order an overall home-heating cost reduction target which must be achieved by obligated energy companies.
173. The new section 103A contains subsections which mirror those in section 103 of the Utilities Act 2000 which deal with the Secretary of State’s power to set an overall carbon emissions reduction target. Subsection (2) of the new section allows the Secretary of State to set more than one overall target for a specified period. *Subsection (3)* allows the Secretary of State to make provision requiring the Administrator to apportion the overall target between gas transporters or suppliers and electricity distributors and suppliers according to criteria specified in an order. New subsection (4) requires the Administrator to exercise its functions in a manner which it considers is best calculated to result in the achievement of the overall target.
174. Subsection (5) of the new section 103A requires the Secretary of State to undertake a consultation with those listed along with such other persons as the Secretary of State considers appropriate before making an order under this new section. *Subsection (6)* provides that an order made under this new section is subject to the affirmative resolution procedure.

Section 71: Power of Secretary of State to require information: carbon emissions reduction targets and home-heating cost reduction targets

175. This section inserts a new section 103B into the Utilities Act 2000 to enable the Secretary of State, by notice, to require information from energy companies, the Authority and any body other than the Authority that is for the time being the Administrator. The information may be required for any of the purposes listed in subsection (1)(a), (b) and (c) of new section 103B.
176. In summary, the purposes listed in subsection (1) are to enable the Secretary of State to decide whether to make a carbon emissions reduction order or a home heating cost reduction order, to review the operation and effect of any such order made and also for the purpose of establishing or maintaining a record of the properties which have received measures under either type of order.
177. Subsection (2) of new section 103B allows the Secretary of State to, by notice, require gas transporters and gas suppliers, electricity distributors, electricity suppliers, and the Authority to provide specified information or information of a specified kind within specified periods or intervals to the person who establishes and maintains a measures record on behalf of the Secretary of State. Subsection (3) describes those who fall within the scope of the information gathering power in this new section whilst subsection (4) enables the Secretary of State to make provision dealing with the form in which information must be provided and the time in which it must be provided.
178. Subsection (5) provides that under new section 103B in the Utilities Act 2000 a notice under the section will not be able to require a person to provide information which the person could not be compelled to provide in evidence in civil proceedings.
179. Subsection (6) of new section 103B enables the Secretary of State to share any information obtained under the section with Scottish and Welsh Ministers for the purposes of enabling them to review the operation and effect in Scotland and Wales respectively of either the carbon emissions reduction order or the home-heating cost reduction order.
180. Subsections (7) and (8) make provision enabling the power to request information to be enforced as a relevant requirement. These provisions ensure that the definitions of a relevant requirement in the relevant parts of the Gas Act 1986 and the Electricity Act 1989 are construed so as to encompass any requirements imposed by or under section 103B. The effect of these two provisions is to ensure that the Authority, if appointed as Administrator, has the necessary enforcement powers to ensure that requests for information under new section 103B are effectively enforced.

Section 72: Minor and consequential amendments

181. This section refers to Schedule 1, which contains minor and consequential amendments relating to this Chapter.

Chapter 5: Information about Energy Consumption, Efficiency and Tariffs

Section 73: Smart meters

182. This section amends the Secretary of State powers in section 88 of the Energy Act 2008, sections 41HA-HB of the Gas Act 1986, and sections 56FA-FB of the Electricity Act 1989.
183. *Subsections (2) and (6)* amend section 88 of the Energy Act 2008 to enable the Secretary of State to modify a condition of electricity transmission licences, or any agreements or documents made under such licences, for the purposes of rolling out smart meters.
184. *Subsection (3)* amends section 88(3) of the Energy Act 2008 to make clear that the Secretary of State can require the provision of information by licence-holders to GEMA

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

or the Secretary of State, to enable them to assess any matter relating to the provision, installation, or operation of meters.

185. *Subsection (4)* amends section 88(4) of the Energy Act 2008 to make clear that the Secretary of State can make area-based licence or code modifications where these are necessary to roll-out smart meters.
186. *Subsections (5), (7) and (8)* amend section 88(5) of the Energy Act 2008, section 41HB(2) of the Gas Act 1986, and section 56FB(2) of the Electricity Act 1989 to extend the period within which the Secretary of State can exercise the powers until 1 November 2018.

Section 74: Access to register of energy performance certificates etc: England and Wales and Section 75: Access to register of energy performance certificates: Scotland

187. *Section 74* permits the Secretary of State to make regulations enabling changes to be made in respect of the disclosure of documents and information held on the Register of Certificates, Recommendation Reports and Advisory Reports by the Secretary of State. The section will enable the Secretary of State to make data relating to EPCs, DECs and ACRs more publicly available than the current regulations allow.
188. *Subsection (2)* enables the Secretary of State, through regulations, to restrict access to documents and data, or specified parts of such documents or data, from disclosure to a specified description of persons and to exclude documents or data from disclosure where they relate to a specified description of buildings. This subsection also allows the Secretary of State to limit the number of disclosures to persons as specified in the regulations, to specify conditions to which persons to whom disclosure is to be given are to be subject, and to impose sanctions for non-compliance with such conditions.
189. *Subsection (5)* makes various supplementary provision and provides that regulations to be made under this section shall be made by statutory instrument subject to, under *subsection (6)*, the negative resolution procedure. *Subsection (7)* makes it clear for purposes of this section that the reference to disclosure of a document or data includes a reference to disclosure of information derived from a document or data.
190. *Section 75* makes similar provision in respect of Scotland but also enables Scottish Ministers to make provision requiring a person keeping a register to disclose specified information or data.

Section 76: Power to modify energy supply licences: information about tariffs

191. This section provides that the Secretary of State may modify the conditions of supply licences issued under the Gas Act 1986 or the Electricity Act 1989 (*subsection (1)*).
192. *Subsections (2) to (4)* give the Secretary of State power to modify particular or standard licence conditions in order to require electricity or gas suppliers to provide their domestic customers with information about their lowest tariffs. They also allow the Secretary of State to specify how these tariffs should be defined, which of its lowest tariffs a supplier must provide information about and how and when the information should be provided, for example, on all energy bills and statements.
193. *Subsection (5)* allows the Secretary of State to make different provision in different cases, for example, to exempt suppliers who offer only a few tariffs or smaller suppliers from these requirements, and to make any consequential modifications.
194. *Subsection (6)* allows the Secretary of State to make different provision for different cases within a licence, for example, to require different customers to be provided with different information depending on their circumstances.

195. *Subsection (7)* provides that the power under this section expires immediately after 1 November 2018.
196. *Subsection (8)* contains definitions for the purposes of this section.

Section 77: Power to modify energy supply licences: procedure and supplemental

197. This section contains additional provision about the modification of licences under section 76. *Subsection (1)* requires the Secretary of State to consult the holder of any licence being modified, GEMA and others as appropriate before making a licence modification. *Subsection (2)* states that the Secretary of State must publish the modifications as soon as reasonably practicable after they are made.
198. *Subsection (3)* provides that the modification of part of a standard licence condition does not prevent any other part of a condition being regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or of the Electricity Act 1989. Where the Secretary of State modifies a standard licence condition, *subsection (4)* provides that GEMA must incorporate the same modification in the standard conditions of licences subsequently granted.
199. *Subsections (5) and (6)* amend sections 33(1) and 81(2) of the Utilities Act 2000 so that any modifications of standard conditions are treated as incorporated in the standard conditions.

Section 78: General duties of the Secretary of State

200. This section provides that in exercising functions conferred by or under sections 76 and 77 of the Act, the Secretary of State is bound by the principal objective and general duties set out in Part 1 of the Electricity Act 1989 or Part 1 of the Gas Act 1986.

Part 2: Security of Energy Supplies

Chapter 1: Electricity Supply

Section 79: Annual Report by Gas and Electricity Markets Authority on security of electricity supply

201. This section imposes a requirement for GEMA to report annually to the Secretary of State with its assessment of how much capacity GB will need in the future. The total capacity need is that which can meet peak demand while still maintaining an appropriate margin of spare supply to cope with unexpected events.
202. *Subsection (1)* requires GEMA to prepare a report in accordance with subsection (2) before 1 September 2012, and before that date in any subsequent calendar year; and to send that report to the Secretary of State.
203. *Subsection (2)* requires GEMA to forecast peak demand for the supply of electricity, and to provide a range of assessments of the capacity margin needed for that supply.
204. *Subsection (3)* states the report must cover the position for each of the four years following publication of the report, but also enables the Secretary of State to specify different reporting periods by order.
205. *Subsection (5)* sets out variables the assessment must take into account, including the generation of electricity, operation of interconnectors, storage of electricity, and extent to which available capacity may be lower than maximum capacity. *Subsection (6)* allows the assessment to be made based on information provided by someone with existing expertise, including the holder of a transmission licence or any other person.
206. *Subsection (7)* permits the Secretary of State to give GEMA directions regarding the form of the report and the manner in which it must be expressed or sent.

207. *Subsection (8)* contains definitions for the purposes of this section.

Section 80: Annual report by Secretary of State on security of energy supplies

208. This section imposes a requirement for the Secretary of State to publish his view on what electricity supply capacity is needed to meet demand, including spare capacity to cope with unexpected events. It amends section 172 of the Energy Act 2004, under which the Secretary of State is already required to report on security of supply including by reference to generating capacity in Great Britain.
209. *Subsection (2)* supplements the existing reporting requirements set out in section 172 of the Energy Act 2004 by requiring the Secretary of State to include in the report his assessment of the capacity needed to meet demand for electricity in Great Britain. As in section 79, the assessment must: be included from 2012 and in each subsequent year; cover each of the four years following the year of the report and or any other periods the Secretary of State may specify by order; and take account of a number of variables.

Chapter 2: Gas Supply

Section 81: Power of the Gas and Electricity Markets Authority to direct a modification of the Uniform Network Code

210. This section gives a power to the Gas and Electricity Markets Authority (GEMA) to direct a modification of the Uniform Network Code. The Uniform Network Code (UNC, or ‘the Code’) is a legal document which forms the basis of the arrangements between companies that transport gas, and those whose gas they transport.
211. *Subsection (1)* inserts a new section - 36C - into the Gas Act 1986, which allows GEMA to direct a modification to the UNC, which must be in relation to the arrangements in the UNC in respect of a gas emergency and must be a modification which the Authority considers to be a market based modification. The subsections within the new section 36C set out a number of conditions concerning the circumstances and way in which GEMA may modify the UNC, including: that the Authority may only direct a modification if it considers that it will decrease the likelihood of a gas supply emergency occurring and/or decrease the duration or severity of a gas supply; and only after consultation with appropriate persons.
212. *Subsection (2)* states that the said requirement for consultation in the new section – 36C – may be satisfied by consultation undertaken before the commencement of the Act.
213. *Subsections (4) to (6)* ensure that in the event that a change were made to the UNC, those parties directly affected by the change would be able to appeal to the Competition Commission under amendments to rules set out in the Energy Act 2004 (sections 173 – 175 and Schedule 22 of that Act). *Subsection (4)* enables the Secretary of State to exclude the right of appeal in certain cases.

Chapter 3: Upstream Petroleum Infrastructure

Section 82: Acquisition of rights to use upstream petroleum infrastructure

214. This section sets out the procedure for where a person who has previously sought to secure access to a relevant pipeline or facility by application to the owner, but who has not been able to reach agreement with the owner, may apply to the Secretary of State for a notice granting that access. It sets out: the circumstances within which an access dispute may be resolved by the Secretary of State; the considerations the Secretary of State must take into account when deciding how to deal with the application; and the process the Secretary of State must follow.
215. *Subsections (1) to (3)* set out the scope of the dispute resolution procedure, including the persons involved, the types of infrastructure addressed and its geographical extent.

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

216. *Subsection (4)* allows a person who has previously sought to secure access to a relevant pipeline or facility by application to the owner, but who has not been able to reach agreement with the owner, to apply to the Secretary of State for a notice granting that access.
217. Under *subsection (5)*, the Secretary of State may not consider such an application unless satisfied that the applicant and owner have had a reasonable time in which to reach an agreement.
218. *Subsection (6)* requires that the Secretary of State must first consider whether the application should be adjourned to enable further negotiation, considered further, or rejected. In the event that he decides to give it further consideration, he must give an opportunity to be heard to the applicant and the owner, to anyone with usage rights in the pipeline or facility, to the Health and Safety Executive and such other persons as he considers appropriate.
219. *Subsection (7)* lists a number of matters which the Secretary of State must, so far as relevant, take into account in giving further consideration to such an application; including the capacity which may reasonably be made available, incompatibilities of technical specification, the reasonable needs of the owners, and the interests of other parties.
220. *Subsection (8)* provides that the Secretary of State may only issue an access notice if satisfied that it will either not prejudice the reasonable expectations of the owners and their associates, or the exercise of existing rights by other parties in respect of conveyance or processing (*subsection (9)*); or that the notice contains provision for compensation to be paid to any person who suffers loss as a result of any such prejudice (*subsection (10)*).
221. *Subsections (11) and (12)* provide for any such notice to contain such provision as the Secretary of State thinks necessary to secure the applicant an effective right of access and any appropriate ancillary rights; to regulate the charges for the right granted; to allow the owner to recover payments by way of consideration for any right granted; and to permit assignment of the right.
222. *Subsection (13)* provides that a notice under subsection (11) must be given to both the owner and the applicant, and, in the event that it contains any compensation provision under subsection (10), to any person with relevant rights; and does not come into force unless accepted by the applicant within the time specified.
223. *Subsection (19)* defines the ‘owner’ of any upstream infrastructure for the purposes of this section and section 83.

Section 83: Power of Secretary of State to give a notice under section 82(11) on own initiative

224. This section sets out the new process by which the Secretary of State may issue an access notice on his or her own initiative.
225. *Subsection (1)* limits the use of the power to situations in which an access application has been made to an owner, but the owner and the applicant do not reach agreement on the application. Where it applies, *subsection (2)* allows the Secretary of State to issue an access notice, but subject to section 82(8) above, and to the two following subsections.
226. Under *subsection (3)*, the Secretary of State may not issue such a notice unless satisfied that the applicant and owner have had a reasonable time in which to reach an agreement (as in section 82); but must further be satisfied that there is no reasonable prospect of them doing so.

227. Under *subsection (4)* the Secretary of State must, in considering whether to exercise the power, take into account the matters specified in section 82(7) and also give an opportunity to be heard to the persons identified in section 83(5).

Section 84: Compulsory modification of upstream petroleum infrastructure

228. This section deals with compulsory modifications to the infrastructure in question, where it appears that these will be necessary to give effect to an access right sought under section 82.
229. *Subsection (1)* provides that the section applies where an application has been made to an owner, and the Secretary of State is considering whether to give an access notice under section 82(11).
230. *Subsection (2)* enables the Secretary of State to issue a notice requiring modifications to the pipeline or facility in question, where it appears to him that this can and should be done in order to increase the capacity of the pipeline or facility, or to connect to the applicant's pipeline.
231. *Subsection (3)* provides that such a notice must: specify the modifications to be made and the recompense due to the owner; require the applicant to make appropriate arrangements to secure payment of these sums; require the owner to make the modifications if the payment arrangements are made; and authorise the owner to recover the relevant sums from the applicant when the modifications are made.
232. *Subsection (4)* provides that the notice may also provide for compensation for any loss which may be incurred by other users as a result of the making of the modifications; and *subsection (5)* provides that a notice containing any such provision is to be given to any person with relevant rights, as well as to the owner and the applicant.
233. *Subsection (7)* provides that before giving such a notice, the Secretary of State must take into account the matters specified in 82(7), and must give an opportunity to be heard to the persons specified in *subsection (8)*.
234. *Subsection (10)* defines the 'owner' of any upstream infrastructure for the purposes of this section – it should be noted that this definition is more limited than that which applies in sections 82 and 83.

Section 85: Variation of notices under sections 82 and 84

235. This section allows for variation of notices under sections 82 and 84 once they have been issued, enabling amendments to be made to a notice without having to restart the dispute resolution procedure from the beginning.
236. *Subsection (1)* allows the persons to whom notice is given to agree to, vary or set aside the notice.
237. *Subsection (2)* allows the Secretary of State to vary a notice on the application of one of the persons to whom it has been given.
238. *Subsection (3)* provides that he may do so only if satisfied that it is necessary to resolve a dispute about the notice between its recipients.
239. *Subsection (4)* requires the Secretary of State to give an opportunity to be heard to the persons specified in the subsection.

Section 86: Publication of notices and variations

240. This section allows the Secretary of State to publish any access notice, modification notice or variation notice, in whole or in part or in summary. But before doing so, he must give an opportunity to be heard to the persons to whom the notice has been given and to such other persons as he considers appropriate (*subsection (3)*).

Section 87: Powers of Secretary of State to require information

241. This section gives the Secretary of State new powers to require information about the progress of access negotiations.
242. *Subsection (1)* provides that where the Secretary of State has reason to believe that an application for access to upstream petroleum infrastructure has been made, he may require either the applicant or the owner to confirm this.
243. *Subsection (2)* allows the Secretary of State to require any applicant or owner to provide such information as he may specify, in order for him to decide whether to exercise any function under sections 82, 83 and 84, and if so, how.
244. *Subsections (3) and (4)* provide analogous powers to require information from anyone seeking a variation of an access notice, and from the other person to whom the notice in question was given.
245. *Subsection (5)* confirms that the information which may be required includes financial information.
246. *Subsection (6)* requires the Secretary of State not to disclose information supplied under this section except with the consent of the person who supplied it, or in accordance with his or her statutory obligations.

Section 88: Enforcement

247. This section provides for the enforcement of the requirements imposed in this Chapter.
248. *Subsections (1) to (3)* create a new offence, for the giving of false information to the Secretary of State for the purpose of influencing the exercise of his functions under this Chapter. This offence can be committed either when a person knows or believes the information in question is false, or is reckless as to whether the information is false. A person guilty of such an offence is liable to a fine not exceeding level five on the standard scale (currently £5000 in England, Wales and Scotland).
249. *Subsections (4) to (6)* make related provision for proceedings, and for offences by bodies corporate, in relation to that offence.
250. *Subsection (7)* provides that the duty of a person to comply with an access notice or a modification notice is a duty owed to any person who may be affected by a failure to comply with it.
251. *Subsection (8)* provides that any such duty may be enforced by a person to whom it is owed, as if it were a contractual right.
252. *Subsection (9)* provides that the duty of a person to comply with an information request under section 87 is enforceable by civil proceedings by the Secretary of State.

Section 89: Minor, consequential and supplemental provision

253. This section, and Schedule 2 to the Act, provide for various matters which are consequential or supplemental to the main provisions of this Chapter.
254. The Schedule amends the parts of the Petroleum Act 1998 and the Pipelines Act 1962 which set out the current regime for third party access to offshore pipelines, and for onshore pipelines, respectively, so that they no longer apply to upstream petroleum infrastructure within the scope of this Chapter. They do however continue in effect so far as other pipelines are concerned (in particular, the 1962 Act continues in effect with respect to onshore pipelines which are not upstream petroleum pipelines). The Schedule therefore provides amendments which are necessary to ensure that the new regime does not conflict with the existing regime.

255. The Schedule also provides for the repeal of certain provisions of the Gas Act 1995 and the Energy Act 2008, which are entirely subsumed by the new provision in this Chapter.

Section 90: Interpretation

256. This section provides definitions for various terms used in the Chapter. The definitions of ‘upstream petroleum pipeline’, ‘gas processing facility’ and ‘oil processing facility’ are of particular importance, being central to the scope of the Chapter – see section 82(1), etc. These three definitions in turn depend on the meaning of other terms defined in this section. The definition of ‘payments’ is also of note since it allows for payment to be given in money or money’s worth – in other words, it provides for payments in kind.

Section 91: Meaning of “associate” for the purposes of section 82

257. This section provides the definition of “associate” in section 82.

Chapter 4: Downstream Gas Processing Facilities

Section 92: Acquisition of rights to use gas processing facilities for downstream purposes

258. **Section 92** amends section 12 of the Gas Act 1995.
259. *Subsection (2)* amends the heading of section 12 to clarify that this section now applies only where access to a gas processing facility is sought for a downstream purpose. *Subsections (4), (6), and (7)* ensure that section 12 only applies in such cases.
260. *Subsections (3), (8), (9) and (10)* amend section 12 so that obligations under that section will be enforceable by the Gas and Electricity Markets Authority, under the regime in sections 28 to 30F of the Gas Act 1986.
261. *Subsection (5)* requires the owner of a gas processing facility to publish in draft the conditions on which access will be granted to their facility, and take any representations into account, before finalising those conditions. This implements, in relation to downstream gas processing facilities, the consultation requirement in Article 33 of Directive [2009/73/EC](#).
262. *Subsection (10)* also amends section 12 to insert a new subsection (5A), which provides for the meaning of “downstream purpose”.
263. *Subsections (11) and (12)* amend and supplement, as necessary, the existing definitions in section 12.

Chapter 5: Special Administration

Section 93: Amendment of section 166 of the Energy Act 2004

264. This section requires that as soon as practicable after issuing an indemnity in respect of a special administration (whether of an electricity or gas transmission company, a network distribution company, or an energy supply company) the Secretary of State must lay a statement of the agreement before Parliament. It also requires the Secretary of State to report to Parliament where a sum is paid out under such an indemnity.

Special administration under this Chapter

Section 94: Energy supply company administration orders

265. This section provides that a court may make an energy supply company administration order (esc administration order) in relation to an energy supply company. An energy

supply company is defined in *subsection (5)* as a company that holds a licence from GEMA to supply gas or electricity.

266. *Subsection (1)* describes an esc administration order as an order made by the court in relation to an energy supply company, which directs that the affairs, business and property of the company are to be managed by a person appointed by the court, while the order is in force.
267. *Subsections (2) and (3)* explain that the person appointed by the court for the purposes of an esc administration order is known as the ‘energy administrator’, who must perform the duties of an energy administrator to achieve the objectives set out in section 95.
268. *Subsection (4)* provides that an energy supply company administration order applies only to those affairs and business of a non-GB company which are carried out in Great Britain and to its property in Great Britain.

Section 95: Objectives of an energy supply company administration

269. This section states the objectives of an energy supply company administration.
270. *Subsection (1)* states the objectives as: ensuring that the supply of gas and electricity to customers is continued at the lowest cost which it is practicable to incur; and making continuation of the energy supply company administration unnecessary by rescuing the company or making a transfer in accordance with subsection (2).
271. *Subsection (2)* stipulates the ways the continuation of energy supply company administration may be made unnecessary. These are either the rescue of the energy supply company as a going concern or transfers which satisfy subsection (3). *Subsection (3)* states what type of transfers are permissible under the section, and *subsection (4)* provides for how such transfers may take place.
272. *Subsection (5)* provides that rescue is to be preferred to transfer in achieving the objective of energy supply company administration and states that transfers are only to be effected when; rescue is not reasonably practicable without transfers; where the objective of the energy supply company administration cannot be achieved through rescue without transfers; or where such transfers would produce a better result for the creditors or members of the company.

Section 96: Application of certain provisions of the Energy Act 2004 in relation to esc administration orders

273. This section modifies the provisions in sections 156 to 167 of and Schedules 20 and 21 to the Energy Act 2004 (the existing special administration regime for energy licensees), and sections 171 and 196 (interpretation) so they apply in relation to an energy supply company (esc) administration order.
274. The provisions applied include:
- Section 156 of the Energy Act 2004, which provides that an application to the court for an esc administration order can be made only by the Secretary of State or by the Gas and Electricity Markets Authority (GEMA) with the consent of the Secretary of State;
 - Section 157 which empowers the court in relation to an application for an esc administration order. The court can make an esc administration order only if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Secretary of State under section 124A of the [Insolvency Act 1986 \(c.45\)](#) it would be just and equitable (aside from the objective of energy supply company administration) to wind up the company in the public interest;
 - Section 158 which stipulates the status of the energy administrator. It provides that the administrator must exercise management functions for the purpose of

achieving the objective of the energy supply company administration as quickly and efficiently as is reasonably practicable and must exercise powers and perform duties in the manner which, in so far as it is consistent with the objective of the energy supply company administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;

- Section 159 and Schedule 20 which apply the rule making power in section 411 of the [Insolvency Act 1986 \(c.45\)](#). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to energy supply company administration. It also grants the Secretary of State the power to make such modifications to primary legislation relating to insolvency (including the provisions of the Act) as the Secretary of State considers appropriate in relation to energy supply company administration;
- Schedule 21 which provides for the transfers to another company or companies as a going concern of so much of the energy supply company's assets as are necessary to ensure that the objective of the energy supply company administration is met. Such transfer schemes are to be made by the energy administrator with the approval of the Secretary of State, after he has consulted GEMA;
- Sections 160 to 164 which prevent energy supply company administration being frustrated by prior orders of various types being granted before the Secretary of State or Gas and Electricity Markets Authority have been given an opportunity to apply for an esc administration order or by other steps being taken when an esc administration order has been made or an application is outstanding;
- Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in energy supply company administration in order to achieve the objective of energy supply company administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;
- Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the energy administrator's powers and duties;
- Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to an energy supply company in energy supply company administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable; and
- Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

Section 97: Conduct of administration, transfer schemes etc

275. This section gives the Secretary of State powers to make rules under section 411 of the Insolvency Act 1986 in order to give effect to this Chapter.

Section 98: Modifications of particular or standard conditions

276. This section confers powers on the Secretary of State to modify the conditions of any gas or electricity licence held by a particular person in order to recover any shortfall in meeting the costs of energy supply company administration. The modifications that can be made are specified in section 99.
277. *Subsections (3) to (5)* require the Secretary of State to consult the holder of any licence being modified and anyone else he thinks appropriate before making a modification and to publish modifications made under this section.

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

278. *Subsection (7)* stipulates the requirement on GEMA to incorporate any modification of standard conditions made by the Secretary of State into new licences it grants and to publish these modifications.
279. *Subsection (8)* limits the exercise of the powers under this section to eighteen months after commencement of this section.
280. *Subsections (9) to (12)* provide that modifications made under this section to standard conditions of (i) electricity generation, distribution and supply licences, (ii) gas transporter, supply and shipping licences, and (iii) gas and electricity interconnector licences, are reflected in the sections of the Utilities Act 2000 and the Energy Act 2004 which govern the standard conditions of those licences.

Section 99: Licence conditions to secure funding of energy supply company administration

281. This section specifies the modifications that the Secretary of State can make to gas and electricity licences to secure funding of energy supply company administration.
282. *Subsections (1) and (2)* state the modifications that may be made under section 98 include requiring the holder of the licence to raise the charges imposed by them so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of an energy supply company available to meet the expenses of energy supply company administration. This will allow the costs of energy supply company administration to be recouped via the licence mechanism from the industry and ultimately from consumers.
283. *Subsection (3)* defines a ‘shortfall’ in meeting the expenses of energy administration as the property of the company being insufficient to meet the costs of energy supply company administration. It also defines making payment to make good the shortfall as discharging ‘relevant debts’ which cannot otherwise be met out of the available property.
284. *Subsection (4)* defines relevant debts and includes obligations to repay the grants, loans, sums paid out under an indemnity and sums paid out under guarantees under sections 165, 166 and 167 of the Energy Act 2004 as applied by section 96 of this Act.

Section 100: Modifications under the Enterprise Act 2002

285. This section provides the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the Enterprise Act 2002 and includes a power to make consequential modifications to this Chapter of the Act where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Section 101: Power to make further modifications of insolvency legislation

286. This section gives the Secretary of State the power to make modifications to any provisions under this Chapter. This power is designed to enable the Secretary of State to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern. This is particularly so as the energy market continues to develop rapidly.

Section 102: Interpretation of Chapter 5

287. This section defines the terms used in sections 93 to 101.

Chapter 6: Continental Shelf

Section 103: Revocation etc of designations under Continental Shelf Act 1964

288. This section enables designations under section 1(7) of the Continental Shelf Act 1964 to be revoked, amended and re-enacted. This will provide flexibility in making arrangements about maritime boundaries with the United Kingdom's neighbours by enabling us to swap areas which have already been designated under section 1(7).

Part 3: Measures for Reducing Carbon Emissions

Section 104: Offshore transmission and distribution of electricity: extension of time for licence modifications and property scheme applications

289. *Subsections (1) and (2)* of this section extend the life of powers available to the Secretary of State under sections 90 and 91 of the Energy Act 2004 to amend offshore transmission and distribution licences and coordination licences. The powers expired in December 2010. The extension is for eighteen months following the passing of this Act and is intended to enable the Secretary of State to finalise the implementation of the licensing regime for the construction and operation of offshore transmission assets.
290. *Subsection (3)* enables the Secretary of State to extend to 2025 the life of the powers of GEMA under Schedule 2A to the Electricity Act 1989 to make property transfer schemes. GEMA's powers may be exercised where there is a tender exercise for the appointment of an offshore transmission owner, and the transmission assets are not constructed or installed by the successful bidder, and affected parties are unable to agree what property or rights need to be transferred to the successful bidder (or the valuation of them). The powers to make such schemes would otherwise have expired in 2013 unless extended by order until 2016.

Section 105: Regulation of security of nuclear construction sites

291. This section amends section 77 of the Anti-terrorism, Crime and Security Act 2001. Section 77 of the 2001 Act enables the Secretary of State to make regulations for the purposes of ensuring security at nuclear sites and nuclear premises.
292. This amendment provides for an additional matter in relation to which the Secretary of State can make regulations. It will enable regulations to be made to ensure the security of civil nuclear sites under construction and which are located within 5km of an existing nuclear site.

Section 106: Agreement about modifying decommissioning programme

293. This section amends the powers that the Secretary of State has under section 46 of the Energy Act 2008 when approving a funded decommissioning programme, by enabling the Secretary of State to enter an agreement which sets out how the Secretary of State will use the power to propose modifications under section 48 of the Energy Act 2008.
294. *Subsection (2)* inserts new subsections (3A) to (3G) into section 46. These new subsections enable the Secretary of State, when approving a programme, to enter into an agreement setting out the manner and also the period in which the Secretary of State will, or will not, exercise the power to propose a modification to an approved funded decommissioning programme under Section 48 of the Energy Act 2008. Such an agreement may subsequently be amended by the Secretary of State and the other party mutually agreeing to do so.
295. The Secretary of State may not enter into or amend such an agreement unless satisfied that the agreement includes adequate provision for the modification of the funded decommissioning programme in the event that there ceases to be prudent provision for the costs of decommissioning, waste management and waste disposal.

296. The agreement may also include provision for determination by a third party of matters set out in the agreement which relate to the provision made in the funded decommissioning programme for the technical matters and for the Secretary of State to be bound by such a determination.
297. The Secretary of State may enter into such an agreement notwithstanding that any such agreement fetters the discretion of the Secretary of State.
298. The amendment contained in *subsection (3)* ensures that the power to enter into an agreement must be exercised with the aim of securing that prudent provision is made for the technical matters (including prudent financial provision for the designated technical matters).

Section 107: Abandonment: infrastructure converted for CCS demonstration projects

299. *Subsection (1)* provides for the Energy Act 2008 to be amended as described at *subsections (2) to (5)*. *Subsection (2)* inserts two new sections – sections 30A and 30B - into the Energy Act 2008. The new sections 30A(1) and 30B(1) provide the Secretary of State with a discretionary power to designate offshore installations and pipelines.
300. Section 30A(2) provides that the Secretary of State may not make a designation order under section 30A(1) in relation to an installation licensed by Scottish Ministers or located in Scotland. Section 30A(3) provides that, if a designated installation becomes an installation that is licensed by the Scottish Ministers, the designation order ceases to have effect.
301. Sections 30A(4) and 30B(2) provide that designated installations and pipelines qualify for change of use relief if they have been used as part of a CCS demonstration project and the trigger event occurs during the time they were used in that way.
302. Sections 30A(5) and 30B(3) define the trigger event by reference to the point at which captured carbon dioxide is first present at installations or pipelines used in a particular CCS demonstration project. Captured carbon dioxide is defined in section 30A(12) and 30B(7).
303. Sections 30A(6) and 30B(4) set out the consequences where an installation or pipeline has been designated and the trigger event has happened. Section 30A(6)(a) provides that a notice under s.29(1) of the Petroleum Act 1998 (requiring the submission of an abandonment programme for an installation) cannot be served on a person if the only basis for serving such a notice is that one or more of subsections (7) to (9) applies to that person. Sections 30A(6)(b) and 30B(4) provide that a decommissioning obligation may not be imposed under s.34 of the Petroleum Act 1998 on a person if the only basis for proposing such a person for decommissioning obligations is that one or more of sections 30A(7) to (10) or 30B(5) (respectively) apply to that person. This does not prevent an organisation that could have been made liable for decommissioning of a facility when used for oil and gas, also being made liable for decommissioning when it is used for carbon dioxide storage, if a decommissioning obligation could be imposed on it on another basis.
304. Sections 30A(11) and 30B(6) provide that the power to make a designation order does not include a power to revoke it (such a power would otherwise be implied pursuant to section 14 of the Interpretation Act 1978). However, a designation order will only have effect to qualify an installation or pipeline for change of use relief if it is used as part of a CCS demonstration projects and once the trigger event has taken place.
305. *Subsection (5)* revises section 105(2) of the Energy Act 2008 with the effect that the Secretary of State will be able to make a designation order under subsections 30A (1) and 30B (1) without a further parliamentary process.

Section 108: Carbon dioxide pipelines: powers of compulsory acquisition

306. *Subsection (3)* inserts a new section 12A into the Pipe-lines Act 1962 which provides the Secretary of State with a discretionary power to make an order granting rights over land for pipelines conveying carbon dioxide.
307. The new section 12A(1) defines the circumstances in which the new section 12A applies, namely where an existing pipeline (or part of a pipeline) is intended to be converted to carry carbon dioxide, whether that pipeline is currently in use for another purpose or not in use at all.
308. Section 12A(2) allows an application to be made to the Secretary of State by the owner of a pipeline that is to be converted to carry carbon dioxide for an order for the compulsory acquisition of rights over land that are necessary for the conversion and subsequent use of the pipeline. An order may be sought in relation to part only of the land through which the pipeline runs.
309. Sections 12A(4), 12A(6) and 12A(12) provide that equivalent conditions, procedural provisions and procedures are applied to the making of a compulsory rights order under section 12A as for an order under section 12 of the Pipelines Act 1962.

Section 109: Contribution to carbon budgeting under the Climate Change Act 2008

310. This section sets out that the Secretary of State must prepare and publish an annual report on the extent to which the green deal plans and the energy company obligations have fulfilled the duty in the Climate Change Act 2008 to meet the relevant carbon budget.
311. The first report must be published before the end of 2014.

Section 110: Energy efficiency aim

312. This section sets out that the Secretary of State must take appropriate action to improve the energy efficiency of residential accommodation in England. These improvements will contribute to the Secretary of State fulfilling the duty under section 1(1) of the Climate Change Act 2008.

Section 111: Adjustment of electricity transmission charges

313. This section amends section 185 of the Energy Act 2004, which confers a power on the Secretary of State to make an order establishing a scheme which limits the amounts of charges that authorised transmitters may impose on persons who generate electricity from renewable sources in a specified area of Great Britain. This section amends section 185(11) so that any scheme established by an order under the section may have effect up until 4 October 2034.

Section 112: Electricity from renewable sources: National Park authorities and Broads Authority

314. National Park authorities and the Broads Authority are bodies which have the potential to help the UK meet its climate change targets and renewable energy targets by generating electricity from renewable sources. Section 112 provides both types of bodies with the power to realise this potential and puts each in a similar position to local authorities who are already able to generate electricity from specified renewable sources.
315. *Subsection (2)* describes the scope of the powers being conferred on the National Park authorities and the Broads Authority. *Subsection (2)* confers powers on either type of body to produce electricity from a renewable source, to establish and operate generating stations and other installations for the purpose of producing electricity from a renewable source, to make grants or loans to enable other persons to do anything which the

body may do and also confers powers on the body to use, sell or otherwise dispose of electricity produced by virtue of the powers conferred.

316. *Subsection (3)* defines a renewable source by reference to those sources listed in existing regulations which apply to local authorities in England and Wales and also in Scotland. This ensures that the sources of renewable electricity production between local authorities, National Park authorities and the Broad Authority are the same and in this respect means that the scope of the power is identical to the power available to local authorities to generate renewable electricity.
317. *Subsections (4) and (5)* enable any regulations which amend those regulations which are referred to in subsection (3) to also amend subsection (3).
318. *Subsection (6)* makes clear that the National Park authorities and the Broad Authority must comply with any applicable requirements in Part I of the Electricity Act 1989 when exercising any of the powers conferred by this section. For example, if either body engages in activity at a scale which causes a licence to be required then it must seek such a licence under the Electricity Act 1989.

Northern Ireland: renewable heat incentives

Section 113: Renewable heat incentives in Northern Ireland

319. This section gives the Department of Enterprise, Trade and Investment powers to make regulations to establish a financial support mechanism for renewable heat in Northern Ireland which will be known as the Northern Ireland Renewable Heat Incentive (the NIRHI).
320. *Subsection (1)* gives powers to the Department to make regulations:
 - to establish a scheme to provide financial incentives to encourage and facilitate the development of renewable heat; and
 - about the administrative and financial arrangements for a RHI scheme.
321. *Subsection (2)* provides further details about the scope of the Department's regulation making power. It also contains provisions relating to the administration of the scheme and concerning the making of payments.
322. *Subsection (2)(a)* specifically enables the Department or NIAUR to make payments (or require designated fossil fuel heat suppliers to make payments) to three listed categories of recipient in specified circumstances.
323. *Subsection (2)(a)(i)* provides that owners of plant used for the generation of renewable heat will be eligible to receive NIRHI payments. The section permits an owner to qualify for the NIRHI payment even in the event that they are not actually operating the plant themselves. This flexibility allows for third parties to operate in the renewable heat market: for example, a landlord who owns plant will be eligible for a payment even if the plant is actually operated by the tenant of the property. "Owner" is defined in subsection (3) to include a person who has acquired plant under a hire purchase agreement, a conditional sale agreement or any similar arrangement where title to the plant does not pass immediately.
324. *Subsection (2)(a)(ii)* provides that producers of biogas or biomethane will also be eligible to receive payments. This provision therefore allows the regulations to reward the production of renewable fuels as well as the generation of renewable heat itself. This would allow the Department to encourage and facilitate the development of the biogas/biomethane sectors
325. *Subsection (2)(a)(iii)* provides that producers of biofuels for the purpose of generating heat will be eligible to receive payments.

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which received Royal Assent on 18 October 2011*

326. *Subsection (2)(b)* provides that the regulations can make provision about the calculation of the NIRHI payments described in subsection 2(a). This is a broad and flexible provision allowing the Department to take account of different circumstances in setting the level of payments to various parties.
327. *Subsection (2)(c)* provides that the regulations can make provision about the circumstances in which payments might be recovered. For example, this would enable the Department or NIAUR to make provision to recover funds that may have been paid out by mistake.
328. *Subsection (2)(d)* provides that the regulations may make provision requiring that specified information from designated fossil fuel suppliers be provided to the Department or NIAUR.
329. *Subsection (2)(e)* provides that the regulations can allow payments to be made to fossil fuel suppliers in specified circumstances.
330. *Subsection (2)(f)* provides that the regulations can make provisions about the enforcement of obligations under the NIRHI. These may include a power allowing the Department or NIAUR to impose financial penalties.
331. *Subsection (2)(g)* provides that the regulations may confer functions on the Department or NIAUR (or both) relating to the establishment, administration or financing of the NIRHI scheme.
332. *Subsection (3)* sets out the definitions of specific terms referred to in this section of the Act and which are central to the NIRHI. In particular, the definitions provide as follows:
- they specify that the administrative Authority will be the NIAUR;
 - they explain what is meant by the terms: biogas, biofuel, and biomethane. Subsection (3) also provides a definition of one of the underlying constituent materials: biomass;
 - they provide a definition of “designated fossil fuel supplier”. The definition provides that they are a specified class of fossil fuel suppliers (as provided by regulations) and, in any other case, (i.e. if not provided by regulations) all fossil fuel suppliers;
 - they define “fossil fuel” by means of a list of fuels, including, for example, coal and petroleum products;
 - they define “fossil fuel supplier” as a person who supplies fossil fuel to consumers for the purpose of generating heat. This will therefore exclude electricity suppliers or suppliers of renewable fuels. It will also exclude those who are supplying fossil fuels for purposes other than generating heat;
 - they define the ‘owner’ of plant (see above). As mentioned above, in some cases third parties, for example large energy companies, may wish to finance the deployment of such heat plant in customers’ properties;
 - “plant” is defined as including any equipment, apparatus or appliance; and
 - the definition of “renewable generation of heat” provides that renewable heat is heat generated by means of a source of energy or technology listed at subsection (4).
333. *Subsection (4)* sets out the sources of energy and technologies referred to above in the definition of renewable generation of heat. These are: biomass, biofuels, fuel cells, water (including waves and tides), solar power, geothermal sources, heat from air, water or the ground and combined heat and power systems – but only if the system’s energy source is from a renewable energy source as defined by Article 55F of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) (this has the effect of excluding combined heat and power systems which are powered by fossil fuels). None of the

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sources of energy or technology are limited by capacity, meaning that all scales of plant which generate renewable heat from such a source or technology may be eligible to receive NIRHI payments.

334. *Subsection (5)(a)* allows for the list of energy sources as defined in subsection (4) to be modified by regulations. The Department's intention is to modify the list as technological developments bring forward new technologies capable of making a contribution to the renewable heat sector.
335. *Subsection (5)(b)* allows for the definitions of biofuel, biogas or biomass as listed in subsection (4) to be modified by regulations.
336. *Subsection (6)* allows for regulations to specify that particular activities do or do not constitute the generation of heat for the purposes of defining the generation of heat from biofuels in subsection (2)(a)(iii) and the definition of "fossil fuel heat supplier" generally.
337. Regulations made under this section will be in line with requirements set out in the Statutory Rules (Northern Ireland) Order 1979 by virtue of *subsection (7)*.
338. Regulations made under this section are subject to affirmative resolution by virtue of *subsection (8)*.
339. *Subsection (9)* provides that regulations made under this section may include incidental, supplementary and consequential provision and make transitory or transitional provisions and savings.

Section 114: Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113

340. This section enables the Department of Enterprise, Trade and Investment or the Northern Ireland Authority for Utility Regulation to enter into arrangements with the Gas and Electricity Markets Authority to carry out any of the functions conferred by regulations made under section 113.

Part 4: Coal Authority

Sections 115 and 116: Additional powers of the Coal Authority (England and Wales) and powers of the Coal Authority: Scotland

341. These sections amend the Coal Industry Act 1994 to supplement the Coal Authority's existing powers. They give the Coal Authority the power to take action in respect of subsidence which is not caused by coal-mining activities and water discharges not from coal-mines. This will allow the Coal Authority to offer services in these fields. These sections provides that the Coal Authority's existing functions are not affected by this new power.

Part 5: Miscellaneous and General

Section 117: Amendment of section 137 of the Energy Act 2004

342. This section provides that if the standard conditions of electricity transmission licences are modified under the powers contained in this Act, or under any of the other powers to modify transmission licences contained in the Energy Acts of 2008 or 2010, those modifications are reflected in section 137 of the Energy Act 2004, which governs the standard conditions of transmission licences.

Section 118: Amendment and repeal of measures relating to home energy efficiency

343. *Subsection (1)* repeals the Home Energy Conservation Act 1995 in Scotland and in relation to Wales. The Act continues to apply in England.

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which received Royal Assent on 18 October 2011*

344. *Subsection (2)* amends the definition of “energy conservation measure” so as to ensure that energy conservation authorities, when fulfilling the reporting requirements of the Act are able to report on measures which are available as result of financial support provided by, for example, policies such as the Green Deal and the Energy Company Obligation.
345. *Subsection (5)* repeals section 217 of the Housing Act 2004, a section which imposed a duty on the Secretary of State to improve energy efficiency in residential accommodation in England by 2010. *Subsection (3)* repeals provisions in the Sustainable Energy Act 2003 which are related to the duty in section 217 of the Housing Act 2004. The repeals in subsection (3) are consequential amendments flowing from the repeal of section 217 of the Housing Act 2004.
346. *Subsection (4)* also makes a consequential amendment to the Sustainable Energy Act 2003 which is necessary as a result of the Home Energy Conservation Act 1995 being repealed in relation to Wales. Since the Act is being repealed in relation to Wales the power to make transitional provision in section 4(13)(b) is unnecessary and therefore is being repealed.

Section 119: Consultation

347. This section provides that, where a duty to consult arises under or by virtue of the Act, that duty can be fulfilled by way of consultation before as well as after the Act has been passed.

Section 120: Extent

348. This section sets out the territorial extent of the provisions in the Act. Almost all provisions in the Act extend to England, Wales and Scotland. The main exceptions are:
- sections 42 to 53, which extend to England and Wales only, and sections 54 to 65, which extend to Scotland only. These sections deal with energy efficiency in the private rented sector;
 - section 9, which extends to England and Wales only, and section 10, which extends to Scotland only. These sections provide powers for the Secretary of State and Scottish Ministers respectively to amend their own sets of regulations relating to the energy performance certificate;
 - sections 14(3) to (5) and 15(3) , which extend to England and Wales only, and sections 14(6) to (8) and 15(4), which extend to Scotland only. These sections deal with acknowledgment of the green deal plan;
 - section 35(6) which extends to Scotland only. This section deals with green deal appeals, and the revocation or amendment of delegated legislation;
 - section 74, which extends to England and Wales only, and section 75, which extends to Scotland only. These sections deal with access to the register of energy performance certificates;
 - section 110, which extends to England and Wales only and relates to the energy efficiency aim; and
 - section 115, which extends to England and Wales only, and section 116, which extends to Scotland only. Both sections relate to additional powers of the Coal Authority;
 - section 113, which relates to the introduction of a renewable heat incentive for Northern Ireland; and

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- section 114, which relates to the ability of GEMA to act on behalf of the Northern Ireland authority in connection with a scheme made under section 113, extends to England and Wales, Scotland and Northern Ireland.
349. *Subsection (6)* of this section sets out the other exception. It provides that an amendment or repeal of an enactment extends as far as the enactment amended or repealed, with the exception of sections 25 to 29 and section 118(1). Sections 25 to 29 relate to modifying consumer credit legislation in relation to the green deal, amendments made under these sections extend to England and Wales and Scotland only. Section 118(1) repeals measures relating to home energy efficiency in relation to Scotland, and in relation to energy conservation authorities in Wales only.

Commencement

Section 121: Commencement

350. This section sets out the commencement dates for the provisions in the Act. *Subsection (1)* provides for provisions other than those listed in subsections (2) to (5) to come into force, by order, on a day appointed by Secretary of State.
351. *Subsection (2)* provides that the following provisions will come into force, by order, on a day appointed by Scottish Ministers:
- section 10, relating to documents containing information about green deal plans in Scotland;
 - sections 14(6) to (8) and 15(4), relating to acknowledgment of green deal plans in respect of property in Scotland;
 - section 35(6), relating to green deal appeals: revocation or amendment of delegated legislation by Scottish Ministers;
 - sections 54 to 65, relating to the private rented sector in Scotland; and
 - section 75, relating to access to the register of energy performance certificates in Scotland.
352. *Subsection (3)* provides for certain provisions to come into force two months after the Act receives Royal Assent. These are:
- sections 66 to 72 (reducing carbon emissions and home-heating costs);
 - section 73 (smart meters);
 - sections 74 (access to the register of energy performance certificates in England and Wales);
 - sections 76 to 78 (information about energy tariffs);
 - sections 79 to 80 (security of energy supplies);
 - sections 93 to 102 (special administration);
 - section 103 (designations under the Continental Shelf Act 1964);
 - subsection (3) of section 104 (offshore transmission and distribution of electricity);
 - section 105 (regulation of security of nuclear construction sites);
 - section 106 (agreement about modifying a decommissioning programme);
 - section 107 (abandonment: infrastructure converted for CCS demonstration projects);

*These notes refer to the Energy Act 2011 (c.16)
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- section 111 (adjustment of electricity transmission charges);
 - section 112 (electricity from renewable sources: National Park authorities and Broads Authority); and
 - sections 113 and 114 (renewable heat incentives in Northern Ireland).
353. Under *subsection (4)*, section 37 (preparatory expenditure: framework regulations); section 81 (modification of the Uniform Network Code), subsections (1) and (2) of section 104 (offshore transmission and distribution of electricity) and sections 119 to 122 (general provisions) will come into force on the day the Act receives Royal Assent.
354. *Subsection (5)* provides for the commencement of Schedule 1 (reducing carbon emissions and home-heating costs: minor and consequential amendments). Paragraphs 1, 2, 7, 8(1), (2)(a), (3)(a) and (4) and 9 will commence two months after Royal Assent. Paragraphs 4 and 8(2)(b), (3)(b) and (5) will come into force on 1 January 2013. Paragraphs 3, 5 and 6 of Schedule 1 will come into force on 6 April 2014.
355. *Subsection (6)* provides that an order made by the Secretary of State or the Scottish Ministers under this section may appoint different days for different purposes and make transitional provisions and savings.

Section 122: Short title

356. This section confirms the title of the Act once Royal Assent of the Act is achieved.

HANSARD

THE FOLLOWING TABLE SETS OUT THE DATES
AND HANSARD REFERENCES FOR EACH STAGE
OF THIS ACT'S PASSAGE THROUGH PARLIAMENT.

Stage	Date	Hansard reference
House of Lords		
Introduction	8 December 2010	Vol. 723 Col 194
Second Reading	22 December 2010	Vol. 723 Cols. 1101-1160
Committee	17 January 2011	Vol. 724 GC01-50
	19 January 2011	Vol. 724 GC61-GC111
	24 January 2011	Vol. 724 GC115-165
	26 January 2011	Vol. 724 GC197-247
	31 January 2011	Vol. 724 GC259-309
	8 February 2011	Vol. 725 Cols. GC36-76
Report	2 March 2011	Vol. 725 Cols. 1067-1119
	8 March 2011	Vol. 725 Cols. 1569-1585
Third reading	15 March 2011	Vol. 726 Col 133-159
House of Commons		
Introduction	16 March 2011	No debate
Second Reading	10 May 2011	Vol. 527 Cols. 1054-1135

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

Stage	Date	Hansard reference
Committee		All references refer to the Hansard record of Public Bill Committee on the Energy Bill
	7 June 2011	Morning Session: Col. 3-40
		Afternoon Session: Col.43-90
	9 June 2011	Morning Session: Col. 93-114
		Afternoon Session: Col.117-170
	14 June 2011	Morning Session: Col. 173-214
		Afternoon Session: Col.217-254
	16 June 2011	Morning Session: Col. 259-280
Afternoon Session: Col.283-354		
21 June 2011	Morning Session: Col. 357-410	
	Afternoon Session: Col.413-462	
Report and Third Reading	14 September 2011	Vol. 1017 Cols. 1043-1145
House of Lords		
Lords Consideration of Commons Amendments	4 October 2011	Vol. 730 Col. 1076-1104
Royal Assent	18 October 2011	Vol.731 Col.155
House of Commons		
Royal Assent	18 October 2011	Vol.533 Col.773

ANNEX A:: GLOSSARY

CERT – Carbon Emissions Reduction Target. Following on from two three year phases of the Energy Efficiency Commitment CERT requires larger domestic energy suppliers to make savings in CO₂ emitted by householders by promoting the installation of low carbon energy solutions to consumers.

CESP – Community Energy Saving Programme. Requires gas and electricity suppliers and electricity generators to deliver energy saving measures to domestic consumers in specific low income areas of Great Britain.

DECC – Department of Energy and Climate Change.

ECHR – European Convention on Human Rights.

ECO – Energy Company Obligation. Will replace the existing energy company obligations (CERT and CESP) when they end in December 2012

EPC – Energy Performance Certificate. Introduced to help improve the energy efficiency of buildings, providing an ‘A’ to ‘G’ energy efficiency rating.

GEMA – the Gas and Electricity Markets Authority which is bestowed with powers and duties to regulate the gas and electricity markets.

OFT – Office of Fair Trading. UK's consumer and competition authority with an aim to make markets work well for consumers.

OFTO – Offshore transmission owners. There are currently three transmission owners.

UNC – Uniform Network Code. A legal document which forms the basis of the arrangements between companies that transport gas, and those whose gas it transports.