



# Energy Act 2011

## 2011 CHAPTER 16

### PART 2

#### SECURITY OF ENERGY SUPPLIES

### CHAPTER 5

#### SPECIAL ADMINISTRATION

#### *Special administration under the Energy Act 2004*

#### **93 Amendment of section 166 of the Energy Act 2004**

(1) Section 166 of the Energy Act 2004 (indemnities) is amended as follows.

(2) After subsection (3) insert—

“(3AA) As soon as practicable after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.”

(3) After subsection (6) insert—

“(6A) Where a sum has been paid out by the Secretary of State in consequence of an indemnity agreed to under this section, the Secretary of State must lay a statement relating to that sum before Parliament—

- (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
- (b) (except where subsection (4) does not apply in the case of the sum) as soon as practicable after the end of each subsequent relevant financial year.

(6B) In relation to a sum paid out in consequence of an indemnity, a financial year is a relevant financial year for the purposes of subsection (6A) unless—

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- (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
- (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.”

*Special administration under this Chapter*

#### **94 Energy supply company administration orders**

- (1) An energy supply company administration order (referred to in this Chapter as an “esc administration order”) is an order which—
  - (a) is made by the court in relation to an energy supply company; and
  - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) The person appointed in relation to a company for the purposes of an esc administration order is the energy administrator of the company.
- (3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of an energy administrator, so as to achieve the objective set out in section 95.
- (4) In relation to an esc administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In this Chapter—
  - “energy supply company” means a company which is the holder of a relevant licence; and
  - “relevant licence” means—
    - (a) a licence granted under section 7A(1)(a) or (b) of the Gas Act 1986 to supply gas, or
    - (b) a licence granted under section 6(1)(d) of the Electricity Act 1989 to supply electricity.

#### **95 Objective of an energy supply company administration**

- (1) The objective of an energy supply company administration is to secure—
  - (a) that energy supplies are continued at the lowest cost which it is reasonably practicable to incur; and
  - (b) that it becomes unnecessary, by one or both of the following means, for the esc administration order to remain in force for that purpose.
- (2) Those means are—
  - (a) the rescue as a going concern of the company subject to the esc administration order; and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
  - (a) to another company, or

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- (b) as respects different parts of the undertaking of the company subject to the esc administration order, to two or more different companies, of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy supply company administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
  - (a) a transfer of the undertaking of the company subject to the esc administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of an energy supply company administration may be achieved by transfers falling within subsection (3) to the extent only that—
  - (a) the rescue as a going concern of the company subject to the esc administration order is not reasonably practicable or is not reasonably practicable without such transfers;
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
  - (c) such transfers would produce a result for the company’s creditors as a whole that is better than the result that would be produced without them; or
  - (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company’s members as a whole that is better than the result that would be produced without them.

## **96 Application of certain provisions of the Energy Act 2004 in relation to esc administration orders**

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to an esc administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).
- (2) In the application of those provisions generally—
  - (a) for “energy administration”, in each place where it occurs, substitute “energy supply company administration”;
  - (b) for “a protected energy company”, in each place where it occurs, substitute “an energy supply company”.
- (3) In the application of Schedule 20—
  - (a) in paragraph 32(d), for the words from ““energy administration application”” to “Energy Act 2004” substitute ““energy supply company administration application” means an application to the court for an energy supply company administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 96 of the Energy Act 2011”;
  - (b) in paragraph 32(e), for “section 155 of the Energy Act 2004” substitute “section 95 of the Energy Act 2011”;
  - (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 94(4) of the Energy Act 2011”;

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- (d) in paragraph 43, after “the Energy Act 2004” insert “and section 96 of the Energy Act 2011”;
  - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 96 of the Energy Act 2011”;
  - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 96 of the Energy Act 2011”;
  - (g) in paragraph 47, after “Part 1 of this Schedule” insert “and section 96 of the Energy Act 2011”.
- (4) In the application of Schedule 21—
- (a) in paragraph 1(b), for “section 155(3)” substitute “section 95(3) of the Energy Act 2011”;
  - (b) in paragraph 12, for “section 155” substitute “section 95 of the Energy Act 2011”.
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)—
- (a) insert, at the appropriate places, the following definitions—
    - ““energy supply company” has the meaning given by section 94(5) of the Energy Act 2011;”;
    - ““energy supply company administration order” has the meaning given by section 94(1) of the Energy Act 2011;”;
    - ““energy supply company administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 96 of the Energy Act 2011;”;
    - ““objective of the energy supply company administration” is to be construed in accordance with section 95 of the Energy Act 2011;”;
  - (b) in the definition of “energy administrator” for “section 154(2)” substitute “section 94(2) of the Energy Act 2011”;
  - (c) in the definition of “relevant licence” for “section 154(5)” substitute “section 94(5) of the Energy Act 2011”.

## **97 Conduct of administration, transfer schemes, etc**

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), after “Chapter”, in the second place where it appears, insert “(including this Chapter as applied by section 96 of the Energy Act 2011)”.

## **98 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, the Secretary of State may make—
- (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.

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- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must publish every modification made under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) A modification under subsection (1)(a) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (7) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Gas and Electricity Markets Authority must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.
- (8) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (9) In section 33(1) of the Utilities Act 2000 (standard conditions of generation, distribution and supply licences under Part 1 of the Electricity Act 1989), after “76” (as inserted by section 77(5) of this Act) insert “or 98”.
- (10) In section 81(2) of the Utilities Act 2000 (standard conditions of transporter, supply and shipping licences under Part 1 of the Gas Act 1986), after “76” (as inserted by section 77(6) of this Act) insert “or 98”.
- (11) In section 146(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Electricity Act 1989), for “or under this Act” substitute “, under this Act or under section 98 of the Energy Act 2011”.
- (12) In section 150(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Gas Act 1986), for “or under this Act” substitute “, under this Act or under section 98 of the Energy Act 2011”.
- (13) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of gas licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (14) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of electricity licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (15) In this section—
  - (a) references to a gas licence are to a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities relating to gas), and

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- (b) references to an electricity licence are to a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities relating to electricity).

## **99 Licence conditions to secure funding of energy supply company administration**

- (1) The modifications that may be made under section 98 include, in particular, modifications imposing conditions requiring the holder of the licence—
  - (a) so to modify the charges imposed by the licence holder for anything done by the licence holder in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy supply company administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to the licence holder in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.
- (3) For the purposes of this section—
  - (a) there is a shortfall in the property available for meeting the costs of an energy supply company administration if, in a case where a company is or has been subject to an energy supply company administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt” in relation to a case in which a company is or has been subject to an energy supply company administration order, means an obligation—
  - (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 165 of the Energy Act 2004 as applied by section 96 of this Act;
  - (d) to repay a loan made to the company under that section as so applied, or to pay interest on such a loan;
  - (e) to make a payment under section 166(4) of that Act as so applied; or
  - (f) to make a payment under section 167(5) of that Act as so applied.

## **100 Modifications under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power

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to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.

- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002) after “Chapter” insert “(including this Chapter as applied by section 96 of the Energy Act 2011)”.

## **101 Power to make further modifications of insolvency legislation**

- (1) The power of the Secretary of State under paragraph 46 of Schedule 20 to the Energy Act 2004 (conduct of energy administration) to make modifications includes power to make such modifications as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter.
- (2) In paragraph 46 of that Schedule, after “Chapter” insert “(including this Chapter as applied by section 96 of the Energy Act 2011)”.

## **102 Interpretation of Chapter 5**

- (1) In this Chapter—
  - “business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;
  - “company” means—
    - (a) a company registered under the Companies Act 2006, or
    - (b) an unregistered company;
  - “court”, in relation to a company, means the court—
    - (a) having jurisdiction to wind up the company, or
    - (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);
  - “energy administrator” has the meaning given by section 94(2) and is to be construed in accordance with subsection (2) of this section;
  - “energy supply company administration order” has the meaning given by section 94(1);
  - “energy supply company” has the meaning given by section 94(5);
  - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;
  - “non-GB company” means a company incorporated outside Great Britain;
  - “objective of the energy supply company administration” is to be construed in accordance with section 95;
  - “relevant licence” has the meaning given by section 94(5);
  - “subsidiary” and “wholly-owned subsidiary” have the meanings given by section 1159 of the Companies Act 2006;
  - “unregistered company” means a company that is not registered under the Companies Act 2006.

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- (2) In this Chapter references to the energy administrator of a company—
- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 96 of this Act to be the energy administrator of that company; and
  - (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 96 of this Act.