

UTILITIES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part II: Objectives of Regulation of Gas and Electricity

Sections 9 - 12 and 13 - 16: General duties under the Gas Act 1986 and the Electricity Act 1989

20. These sections set out changes to the general duties contained in the 1986 Act and the 1989 Act. For the purposes of these sections, references in these notes to the Authority should be read, unless otherwise stated, to include also a reference to the Secretary of State to whom these sections apply equally.
21. *Sections 9 and 13: Objectives and duties under the 1986 Act and the 1989 Act.* These sections replace the existing general duties of the Directors-General which affect the manner in which they exercise their functions under the 1986 Act and the 1989 Act respectively. The sections give the Authority a principal objective, in carrying out its functions in either sector, to protect the interests of consumers, wherever appropriate by promoting effective competition. The Authority will have a primary duty to carry out its functions in the way best calculated to further the principal objective.
22. This duty to further the principal objective incorporates the matters which form the regulators' existing primary duties. The Authority must have regard to the need to secure that all reasonable demands for the relevant utility are met. In the case of gas, this duty applies to the extent that it is economically feasible for demand to be met. Likewise, the Authority must recognise that, to the extent that the utilities legislation places obligations on utility companies (whether directly, through licence conditions or otherwise), such companies must be able to finance those obligations.
23. In determining the "interests of consumers" for the purpose of the principal objective, the Authority is entitled to take into account the interests of any group or class of consumer. However, the Authority must always have regard to the interests of consumers:
 - who are disabled or chronically sick;
 - who are of pensionable age;
 - with low incomes; or
 - who live in rural areas.Identifying groups of consumers in this way, however, does not oblige the Authority to give these consumers preferential treatment.
24. As well as protecting the interests of existing consumers, the Authority is required to protect the interests of those who will be consumers in the future.
25. The Authority's principal objective under the 1986 Act (as amended) relates to consumers of gas. However, in carrying out its statutory functions, the Authority will

be entitled to have regard to the interests of consumers of electricity. Similarly, the Authority's principal objective under the 1989 Act (as amended) relates to consumers of electricity but, in carrying out its statutory functions, the Authority will be entitled to have regard to the interests of consumers of gas. The Authority will also be empowered, in exercising any function in relation to gas and electricity, to have regard to any interests of consumers in relation to telecommunications services, or water and sewerage services, which are affected by the carrying out of that function.

26. To the extent that it is consistent with furthering its principal objective, the Authority should carry out its functions in relation to gas and electricity in the manner best calculated:

- to promote efficiency and economy on the part of gas companies and electricity companies (other than electricity generators);
- to promote the efficient use of gas and electricity;
- to secure a diverse and viable long-term energy supply; and
- to protect the public from dangers arising from the conveyance or use of gas and dangers arising from the generation, transmission, distribution and supply of electricity,

while having regard to the effect on the environment of connected activities.

27. *Sections 10 and 14: Guidance on social and environmental matters in relation to gas and electricity.* These sections require the Secretary of State to issue, from time to time, statutory guidance to the Authority. The guidance will set out the Government's social and environmental objectives and suggest ways in which the Authority might contribute to these objectives. The guidance will enable the Authority to make an appropriate contribution to the Government's sustainable development agenda. The intention is that such guidance would be of a long-term nature, not subject to frequent changes.

28. The Authority must have regard to this social and environmental guidance when discharging its statutory functions. Where the Authority has separate functions related to social and environmental matters, for instance in respect of the elderly, disabled and energy efficiency, the guidance may be used to indicate the Secretary of State's views on the exercise of the functions.

29. These sections also set out the procedures which the Secretary of State must follow in issuing the guidance. They stipulate that:

- the Secretary of State must consult the Authority, the Council, licence holders and anybody else he thinks appropriate before issuing guidance; and
- the guidance can only be issued 40 days after a draft has been put before both Houses and no motion has been carried against it.

30. *Sections 11 and 15: Health and safety in relation to gas and electricity.* These sections require the Authority to consult the Health and Safety Commission in any case where it appears to the Authority that its decision may have implications for gas and electricity safety, whether in relation to members of the public or persons employed in connection with the relevant industries. In the case of electricity, the Secretary of State may also require the Authority to consult him about particular safety matters. The Authority is under a duty to take account of any advice offered by the relevant health and safety body. This duty applies even if the Authority has not sought advice but it is offered at the instigation of the relevant health and safety body. These sections replace section 4A of the 1986 Act and section 3(3)(d) and (e) of the 1989 Act.

31. Responsibility for advising Ministers and regulatory bodies on health and safety rests primarily with the Health and Safety Commission. The Engineering Inspectorate of the Department of Trade and Industry also has certain duties in respect of safety in

*These notes refer to the Utilities Act 2000 (c.27)
which received Royal Assent on 28th July 2000*

relation to electricity. Responsibility for the actual enforcement of legislation rests with the Health and Safety Executive, the Department of Trade and Industry and with local authorities. These sections do not affect that position.

32. *Sections 12 and 16: Exceptions from the general duties under the 1986 and 1989 Acts.* Sections 12 and 16 between them have four effects:

- the principal objective and general duties in sections 9 and 13 do not apply to the Secretary of State in relation to the issuing by him of guidance on social and environmental matters under sections 10 and 14;
- none of the duties in sections 9 to 11 and 13 to 15 apply to the Authority's functions relating to the determination of disputes and concurrent functions under competition legislation;
- the duties in sections 13 to 15 do not apply to the Secretary of State when he is considering whether to grant consents for the construction of generating stations or for the installation of overhead power lines; and
- to the extent that the Authority or the Secretary of State is obliged by any legislation (including EU obligations) to perform specific duties, none of the duties in sections 9 to 11 or 13 to 15 can be taken to detract from such obligations.