

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

UTILITIES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

8. The Act generally treats gas and electricity separately, although a significant number of the provisions are similar for both sectors. Where this is the case the commentary covers the gas and the equivalent electricity sections together at the point where they first appear in the Act. Subsequent references to these sections refer back to the substantive commentary – they do not repeat it.

Part I: New Regulatory Arrangements

Sections 1 - 8 and Schedules 1 - 3: New Regulatory Arrangements

9. These sections and the schedules establish the Gas and Electricity Markets Authority, and the Gas and Electricity Consumer Council, and provide for the drawing up of a memorandum between the two bodies to ensure effective co-operation between them.
10. *Section 1 and Schedule 1* establish the Authority. The Authority takes the place of the existing offices of the Director General of Gas Supply and the Director General of Electricity Supply. These offices are, in consequence, abolished. The Authority will be a body corporate and will comprise a chairman and at least two other members appointed by the Secretary of State, who will be required to consult the chairman in respect of the appointment of the other members. As a Non-Ministerial Government Department, the Authority will be a Crown body and its staff will be civil servants.
11. *Schedule 1* sets out detailed provisions for the appointment and terms and conditions of members of the Authority. It also sets out provisions relating to the staff and procedures of the Authority. Provision for the financing of the Authority is contained in section 107.
12. *Section 2 and Schedule 2* abolish the existing consumer bodies (the Gas Consumers' Council and the electricity consumers' committees) and establish the Gas and Electricity Consumer Council. The Council will be a body corporate. Its members will be appointed by the Secretary of State. The Act does not lay down any limit on the number or qualifications of members, except that the Secretary of State must have regard to the desirability of appointing one or more persons who are or have been disabled, or have experience of work with disabled people. Members, other than the chairman, will be appointed following consultation with the chairman of the Council. The Council will not be a Crown body, and its staff will not be civil servants. It will have the status of a Non-Departmental Public Body.
13. *Schedule 2* sets out detailed provisions for the appointment and terms and conditions of members of the Council. It also sets out provisions affecting the staff of the Council, and about financial and procedural matters. Paragraph 5(3) of Schedule 2 and paragraph 44 of Schedule 6 secure that staff of the Council are eligible to be members of the Principal Civil Service Pension Scheme even though they will not be Civil Servants.
14. *Section 3 and Schedule 3* provide for the transfer of the functions of the Director-General of Gas Supply and the Director-General of Electricity Supply to the Authority.

The section also transfers the property, rights and liabilities of the Gas Consumers' Council (GCC) to the new Council. In addition, the section and the schedule give the Secretary of State powers to make schemes to transfer the property, rights and liabilities of the Directors-General to either the Council or the Authority as appropriate. Paragraph 9 of Schedule 3 ensures that there is no break in the continuity of employment of staff transferring to the Council from either the GCC or the Office of Gas and Electricity Markets (OFGEM).

15. *Section 4* requires the Authority and the Council to consult on draft "forward work programmes", and then to publish the final versions. The forward work programmes must contain a description of the non-routine projects which the bodies plan to undertake during the year and their associated objectives, together with an estimate of overall expenditure. The Authority and Council could include additional information in their forward work programmes.
16. *Section 5* requires the Authority to make an annual report to the Secretary of State which is to be laid before each House of Parliament. The section identifies what should be included in the report. The equivalent provision for the Council is provided at paragraph 6 of Schedule 2.
17. *Section 6* enables the Authority to publish information and advice which it thinks would promote the interests of consumers, although it must have regard to the need to avoid - so far as is practicable - serious and prejudicial effects. It must consult any individual or body to whom advice or information relates before publishing any information.
18. *Section 7* requires the Council and the Authority to draw up a memorandum setting out the arrangements for co-operation between them. The memorandum is to be sent to the Secretary of State who will lay the document before Parliament. The detailed contents of the memorandum are for the parties to agree, and can be amended over time. However, examples of the ground that might be covered in the document include the arrangements for:
 - consultation between the parties, for example, on forward work programmes and the co-ordination of work on consumer-related issues;
 - the co-ordination of requests for information from the utility companies to avoid unnecessary duplication; and
 - establishing a common understanding of the tests for the disclosure of information.
19. *Section 8* gives the Authority powers to modify licence conditions to ensure the recovery of the ongoing costs of the Authority and the Council, and to recover any costs (including preparatory costs) incurred by the Secretary of State in setting up the new bodies. Modifications can be made without a reference to the Competition Commission, but the Authority is required to consult licence holders before using these powers. There is provision to permit the Directors-General, the Secretary of State, or all three, to undertake this consultation in advance of the establishment of the Authority. These powers to modify payment conditions in licences are time-limited to two years from the date of commencement of the section. The section gives the Secretary of State a power to issue directions to the Authority on the inclusion of payment conditions in licences relating to the expenses of the Council, and the expenses of the Secretary of State in relation to the establishment of the Authority and the Council. This power of direction is intended to safeguard the financial independence of the Council from the Authority by ensuring that the maintenance of appropriate payment conditions in licences is not exclusively a matter for the Authority.

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);

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- 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 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.

Part Iii: Functions of the Council

Sections 17 - 27 and Schedule 2 (paragraphs 10 - 14): Functions of the Gas and Electricity Consumer Council

33. *Sections 17 - 27* set out the main functions of the Council, which are: to keep itself informed of consumer matters and the views of consumers throughout Great Britain; to provide advice and information to regulatory authorities, Government, utility companies and anyone else whose activities may affect the interests of consumers; and to seek to resolve specific complaints from consumers; to provide information and advice to consumers; and to publish information in the interests of consumers. The sections also give the Council power to carry out investigations, and set out the Council's rights of access to information from the Authority and utility companies, and the reciprocal rights of access of the Authority to information from the Council.
34. *Section 17* states that the term "consumers" includes existing and future consumers, and defines "the interests of consumers" and "consumer matter" for the purposes of clarifying the functions of the Council. The definitions used are closely aligned with the definitions used in relation to the Authority's general duties. In considering the interests of consumers, the Council is required to have regard to the interests of four categories of disadvantaged consumers – the disabled or chronically sick, pensioners, individuals with low incomes and individuals living in rural areas. The section clarifies, however, that this does not mean that the Council cannot have regard to the interests of other types of consumer. These categories of disadvantaged consumers are the same as those referred to in the sections setting out the Authority's objective and duties.
35. *Section 18* gives the Council the function of obtaining and keeping under review information about consumer matters and the views of consumers in different areas of Great Britain. To assist it in this task, the Council is required to establish one or more committees for both Wales and Scotland, and has powers to establish one or more similar committees for England. The section also requires the Council to maintain at least one office in each of England, Wales and Scotland at which consumers may apply for information. In addition, the section gives the Council the right to be sent any statutory notices which the Authority is required to publish under the 1986 and 1989 Acts.
36. *Schedule 2 (paragraphs 10 - 14)* set out the procedures for establishing and appointing regional committees of the Council. These procedures include a requirement for the Council to obtain the Secretary of State's approval for the establishment or abolition of a regional committee, or the alteration of the areas for which a committee is established. The Council is also required to consult publicly on any proposals it has for establishing or abolishing a regional committee or altering the areas for which a regional committee is established. A transitional provision in Schedule 7 (paragraph 25), however, disapplies the obligation to consult for any regional committee established within two months of section 18(2) coming into force. The Council has responsibility for appointing members of regional (and other) committees, but must consult the Secretary of State before appointing a chairman to a regional committee. A regional or other committee does not have to include a member of the Council, but nor are Council members precluded from serving on any committee. The Council has a power to pay the Chairmen and members of regional and other committees such remuneration and allowances as the Secretary of State may determine.

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37. *Section 19* gives the Council the function of giving advice and information to Government, regulatory authorities, utility companies and to any other body whose activities may affect the interests of consumers. The range of other bodies could include local authorities, religious organisations and trade unions. It may also make its case in the media. In carrying out the function under this section, the Council is subject to restrictions on disclosing information when this has serious and prejudicial consequences for persons to whom it relates.
38. *Section 20* gives the Council the function of providing information about consumer matters to gas and electricity consumers. This function is concerned solely with information which is already publicly available. Consumers often face practical obstacles in making informed decisions about offers from utility companies because the relevant information is located in a variety of places, often in differing forms, so that comparison is difficult. The intention is that the Council should bring this information together, and make it available (both on its own initiative, and on request) in forms which will be useful to consumers.
39. In addition to the general function of providing information, the section gives the Council a specific duty to publish sets of statistics on:
- licence-holders' performance against the standards of performance, if any, that the Authority or the Secretary of State has prescribed; and
 - complaints made against licence-holders (whether made to the licence-holders, the Authority, or the Council) and the handling of those complaints.
40. The Council will have discretion over the form and frequency of its publication of these statistics. The current requirement on the gas and electricity regulators to publish similar information is repealed.
41. *Section 21* equips the Council with general powers to publish information where it thinks that this will be in the consumer interest. This will enable it to publish material ranging from informal advice to individuals or groups to more formal reports available to anyone who is interested. The Council will be able to publish previously undisclosed information without the consent of the person or persons to whom it relates, provided publication will not cause serious and prejudicial effects to those to whom it relates. The Council is obliged to consult such persons and to consider any opinion offered by the Authority before deciding whether to publish the information.
42. *Section 22* sets out the circumstances in which the Council should seek to help resolve consumer complaints against utility companies about regulated matters. The Council will have powers to obtain information relevant to a complaint from the company concerned in order to facilitate the process of seeking to resolve the complaint in a satisfactory manner. The Council does not have the power to impose a settlement between the parties in any complaint, but is required to advise the consumer if he has a right to refer a dispute to the Authority for resolution. The Council must inform the Authority of all complaints which appear to raise licence enforcement issues, unless it thinks the Authority already knows of the matter. The Memorandum of Understanding between the Council and the Authority (see paragraph 18 above) is expected to cover the inter-relationship between the Council and the Authority, including procedures for handling and liaising on complaints.
43. *Section 23* gives the Council the scope to carry out investigations which go wider than the narrowly defined function of trying to resolve specific complaints. Investigations undertaken may range from simple fact-finding telephone calls to in-depth research on a particular matter leading to the publication of a formal report. Where the Council produces a report based on an investigation it will be able to send the report, if it chooses, to particular persons or bodies, without formally publishing it.
44. *Section 24* gives the Council rights to obtain information it needs to carry out its functions from the Authority, and licensees, subject to certain conditions. The intention

is that the Council should approach the Authority first, where it is seeking utility company information which the Authority might already have, so as to minimise the risk of duplicate or similar requests being made to licensees. The Authority and licence-holders have to provide the information as soon as reasonably practicable and in the form the Council wants. The Council is required to have regard to the desirability of minimising the compliance burden for the Authority and the licence-holders. If the Authority does not provide information sought by the Council, it must give the Council its reasons if the Council wants them. If the licensee does not provide information sought, the Council may pursue the matter under section 27 (see paragraph 47 below).

45. *Section 25* allows the Council to publish reasons that the Authority gives under section 24, provided that those to whom the information relates have consented, or it is already in the public domain, or it will not cause serious and prejudicial effects to those to whom it relates. The Council is obliged to consult such persons, and to consider the opinion of the Authority, before deciding whether to publish the reasons.
46. *Section 26* requires the Council to supply to the Authority any information the latter wants for the exercise of its functions. The Authority is entitled to reasons from the Council for a refusal to provide the information requested. The Authority may publish the reasons, subject to the need to exclude information whose publication might cause serious and prejudicial effects to persons to whom it relates.
47. *Section 27* gives the Secretary of State a power to make regulations setting out the categories of information which the Authority or a licensee may refuse to provide when the Council requests it, or which the Council may withhold from the Authority when the latter makes a request. The section also provides the means of resolving disputes between utility companies and the Council over information requests. The Council can refer a company's refusal to supply information for adjudication to a person appointed by regulations or, if there is no such appointment, to the Authority. The person appointed by the regulations (or the Authority) will determine whether the licence holder is entitled to withhold the information. The Authority or other adjudicator, if one is appointed, must give reasons for determinations to the parties involved, who may publish them as long as that is not likely to have serious and prejudicial effects for those to whom it relates. An adjudicator appointed by regulations may also be given the task of determining any disputes between the Council and the Authority about access to information.

Part IV: Amendment of the Electricity Act 1989

Sections 28 – 43: Electricity licensing; and sections 74 – 75, 81 – 83 and 85 – 88: Gas licensing

48. *Section 28: Prohibition on unlicensed distribution of electricity.* Section 4 of the 1989 Act provides that it is an offence to generate, transmit or supply electricity unless authorised by virtue of a licence or exemption under the Act. Since unauthorised distribution of electricity is not at present an offence, an electricity distributor whose activities do not extend to supply, transmission or generation does not require a licence or exemption. Distribution is not defined in the 1989 Act and it is currently regulated only through conditions in the licences of electricity suppliers (especially the public electricity suppliers who operate the distribution systems serving the great majority of customers).
49. This section amends section 4 of the 1989 Act. The amended section makes unauthorised electricity distribution a prohibited activity and defines that activity. As a result, the unauthorised distribution of electricity becomes an offence in the same way as the other activities referred to above. Distribution will be authorised by means of either a licence granted by the Authority or an exemption order made by the Secretary of State (see sections 29 and 30). Additionally, this section revises the definition of "supply" in order to reflect the creation of the prohibition on unauthorised distribution.

50. *Sections 29 (Exemptions from electricity licensing), 75 (Exceptions from section 5 of the 1986 Act) and 86 (Exemptions from gas licensing).* These sections deal with the case in which a person is carrying out one or more of the activities for which a licence would normally be required but where licensing would be unnecessarily onerous. Examples might be the owner of a caravan site who resupplies power to each of the caravans, or a local authority which operates a combined heat and power scheme for a block of flats. The sections provide powers for the exemption of such persons. Exemptions may only be granted by the Secretary of State, and may be granted either to a class of persons or to an individual person. In order to protect the interests of consumers and to allow the Authority to perform its duties, the Secretary of State may attach conditions to any exemption, and may revoke or withdraw the exemption if, for example, such a condition is breached. The effect of revocation or withdrawal is that, unless a licence is obtained, the continuation of the activity previously authorised by the exemption becomes an offence. These sections are similar to section 6A of the 1986 Act and section 5 of the 1989 Act, although the new provisions clarify the ability of the Secretary of State to attach conditions to exemptions and align the gas and electricity provisions.
51. Section 5(2) of the 1986 Act (which gives effect to Schedule 2A of that Act), provides a system by which certain activities are excepted from the licensing requirement. Section 75 repeals these sections to avoid having two methods of achieving the same result. It is the Government's intention, however, to make exemption orders under the new section 86 powers which will replicate the exceptions currently provided for by Schedule 2A.
52. *Section 30: Licences authorising supply etc. of electricity.* This section replaces section 6 of the 1989 Act with three new sections, sections 6, 6A and 6B. Under new section 6, the Authority will have the sole power to grant electricity licences. The Secretary of State's existing power to grant electricity licences will cease, bringing electricity into line with gas in this respect. The amended section also introduces several significant provisions relating to the separation of supply and distribution, namely:
- a power to grant a licence authorising electricity distribution (section 6(1)(c));
 - the creation of a single category of electricity supply licence and, hence, the removal of the concept of public electricity suppliers (sections 6(1)(d) and 6(3)) ; and
 - a statutory prohibition on the same legal person holding both an electricity supply licence and an electricity distribution licence (section 6(2)).
53. The new section 6A lays down the procedures to be applied in respect of the grant, extension or restriction of electricity licences and provides a power for the Authority to make regulations governing these procedures. (This power has hitherto rested with the Secretary of State.) The introduction of these provisions, and amendments to be made to the 1986 Act brings the 1986 and 1989 Acts closely into line in this respect. The new section 6B sets out additional procedures which apply in the case of electricity transmission licences, where the concept of a geographically exclusive "authorised area" is retained.
54. *Section 31: Enactments referring to public electricity suppliers.* The new section 6 of the 1989 Act separates the activity of electricity supply and distribution and ends the concept of "public electricity supplier" (see paragraph 52 above). References in existing enactments to the relevant terms need to be changed to reflect the new licensing structure. This section sets out the changes that are required. It provides that:
- references to public electricity suppliers are, after the commencement of this section, and depending on the nature of the activities carried out, to be taken to be references to electricity suppliers or distributors, or both, as defined in the 1989 Act as amended by this Act;

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- references to the supply of electricity are to be taken to be references to the supply or distribution of electricity, or both, according to the nature of the activity referred to; and
 - references to holders of supply licences under section 6(2) of the current Act (ie so-called ‘second tier’ supply licences, as opposed to the supply licences granted under section 6(1)(c) to the public electricity suppliers) are to be taken to be references to supply licences as provided for by this Act.
55. *Sections 32 and 74: Electricity licence conditions and gas licence conditions.* These sections amend section 7 of the 1989 Act and section 7B of the 1986 Act respectively. The purpose of these amendments is to align the powers in the two Acts as far as practicable in relation to the inclusion of conditions in licences.
56. *Sections 33 and 81: Standard conditions of electricity and gas licences.* Section 33 brings the 1989 Act into line with the 1986 Act (as amended by the Gas Act 1995) by introducing the concept of standard conditions of licences into electricity. This concept is designed to ensure that all licences of a particular type contain the same licence conditions as far as appropriate and to facilitate a procedure whereby licence conditions may be modified collectively (see section 35). Section 33(1), which follows the model established by section 8(2) of the Gas Act 1995, gives the Secretary of State the power to draw up and publish the standard conditions of the licences before a specified date. As is already the case for gas, after that date, the Secretary of State will have no further role in making licence conditions, although he may veto proposals made by the Authority to modify the standard conditions he has established, either when granting a licence or subsequently.
57. Section 33(2) permits the inclusion of conditions in standard conditions of licences which make provision in respect of the operation of other standard conditions. Under this provision, a standard condition may provide for other standard conditions of the same licence type not to be brought into operation, to be suspended or to be re-activated in circumstances specified in the condition. Identical provision is made for standard conditions of gas licences in section 81(1).
58. The existence of such provisions is intended to permit more flexible licensing arrangements. For example, while all electricity suppliers will, by and large, have licences containing the same standard conditions, not all suppliers will be serving all segments of the electricity supply market. Some may decide to serve only the industrial and commercial segments. In such cases it will not normally be necessary for a licence holder to be subject to the additional standard conditions which regulate supply to the domestic market segment. Under this provision, it will be possible for these conditions to be rendered inoperative in individual licences unless and until a direction is given bringing them into force.
59. Section 33(3) inserts a new section 8A into the 1989 Act which incorporates by reference the standard conditions established under the power in section 33(1) into all licences granted after section 33(3) comes into force. (Part II of Schedule 7 provides for the incorporation of standard conditions into existing electricity licences by means of licensing schemes to be made by the Secretary of State.) It also gives the Authority a power to modify the standard conditions established by the Secretary of State when granting a licence. It sets out the necessary process required for this including, in line with the existing provisions of the 1989 Act, a power for the Secretary of State to veto such modifications.
60. The passage of this Act gives rise to the need to revise some of the standard conditions of gas licences. The simplest way of achieving this is to replace completely the existing sets of standard conditions with new sets, even though many of the existing conditions are to be replicated in these new sets. This is achieved by subsections (2) and (3) of section 81. The provisions of section 8(2) of the Gas Act 1995 which introduced

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standard conditions of licences into gas for the first time are spent and are therefore repealed as indicated in Schedule 8 of this Act.

61. Drafts of the new standard licence conditions for gas and electricity were published for consultation by OFGEM on behalf of the Secretary of State on 7 February 2000. Further consultation on the basis of a revised set of standard licence conditions is expected to take place in Autumn 2000. Copies of the draft standard conditions, and any subsequent revisions can be accessed on the OFGEM website (www.ofgem.gov.uk).
62. *Sections 34 - 40 and 82 - 83*: implement revised arrangements for the modification of electricity and gas licence conditions by the Authority and for licence modification references to the Competition Commission.
63. At present, under section 11 of the 1989 Act, electricity licence conditions may be modified on an individual basis and with the consent of the licence holder. Licences may also be modified without the consent of the licence holder following references made to the Competition Commission under the 1989 Act and other Acts. This is discussed more fully below – see the commentary on sections 36, 37, 38 and 40.
64. In gas, the existence of standard conditions of licences provides the basis for an additional means of licence modification, in which the standard conditions of all licences of a given type may be modified in the same way if more than a prescribed percentage of holders of that type of licence support the change. This is sometimes (though not in legislation) referred to as “collective licence modification”. In the absence of standard conditions of licences in electricity prior to the coming into force of sections 33-35 of this Act, there is no provision in the 1989 Act for collective licence modification.
65. *Section 34* amends section 11 of the 1989 Act, which deals with the modification of the conditions of individual licences, to reflect the introduction into electricity licensing of standard conditions and to bring arrangements for modifying individual electricity licences into line with the existing arrangements in gas. Section 11(1) is replaced by two new subsections (1) and (1A). The new subsection (1) makes clear that section 11 (as amended) relates only to the modification of conditions of a particular licence. Subsection (1A) provides that the modification of a standard condition of an individual electricity licence shall be so as to meet the circumstances of the case and shall not unduly disadvantage any holder of that type of licence in competing with any other such licence holder. Provision made by section 34(2) ensures that where a standard condition is modified in part, the unmodified part of the condition continues to be considered as a standard condition of the licence. This provision, taken from existing gas legislation, is repeated throughout the licence modification sections of this Act wherever provision exists which would permit the modification of a standard condition of an individual licence.
66. *Section 35* inserts a new section 11A into the 1989 Act which provides for collective modification by the Authority of the standard conditions of all electricity licences of a given type and for the making of any such incidental and consequential modifications as the Authority deems necessary. The new section sets out the procedures to be followed by the Authority in the case of such a modification. The Authority must give notice of its proposals both generally, by publishing a notice in such manner as it considers appropriate to bring the notice to the attention of those likely to be affected by the modification, and specifically to the Council and the Secretary of State. The Secretary of State may veto the proposed modification. There must be an opportunity for representations or objections to be made by any interested party, which includes but is not limited to “relevant licence holders” (see below).
67. The proposed modifications may not be made if the proportion of “relevant licence holders” who register an objection to the proposal exceeds either of two blocking minority thresholds. These thresholds relate to: (i) the proportion of “relevant licence holders” who object (expressed as a percentage of all “relevant licence holders”); and

- (ii) the same proportion, weighted by the market share of the objectors. Different thresholds may be prescribed for cases (i) and (ii). “Relevant licence holders” are defined as, in the case of a modification which creates new conditions, all holders of the given licence type and, in the case of modification or omission of existing conditions, any licence holder in whose licence the relevant conditions are operative. “Operative” here means that a condition has not been rendered inoperative by the making of a direction under a licence condition included in the licence by virtue of the power in section 33(2).
68. The section provides that the Secretary of State may determine by order (subject to affirmative resolution procedures) the values of the blocking minority thresholds for each test for each licence type, and the means by which licence holders' market share is to be determined for the purposes of the second test.
69. *Section 82* (save for subsection (1)) amends section 23 of the 1986 Act so that the provisions for collective modification of gas licences mirror those described in the preceding paragraphs for electricity. Subsection (1) amends section 8(7) of that Act to align it with section 8A(6) of the 1989 Act as introduced by section 33(3) of this Act.
70. *Sections 36, 37, 38 and 40* amend sections 12, 13, 14 and 15 of the 1989 Act respectively. Sections 12 to 14 of that Act relate to licence modification references to the Competition Commission by the Director, reports on such references by the Competition Commission and modifications of licences which may result. Section 15 provides for licences to be modified by the Secretary of State following adverse public interest findings by the Commission made following references made to it under other Acts of Parliament. The amendments made by section 36 to section 12 allow the Authority to make licence modification references to the Competition Committee either in the case of individual licences or in respect of collective licence modifications such as are provided for by the new section 11A of the 1989 Act. The changes made by sections 36 and 37 to sections 13 and 14 are largely consequent on this. The changes made by section 40 to section 15 allow the Secretary of State, following a reference report by the Commission made under another Act, either to modify the conditions of individual licences or to modify collectively the standard conditions of all licences of a given type. The resulting provisions of the 1989 Act mirror very closely the corresponding provisions of section 24 to 27 of the 1986 Act as amended by this Act. These sections also include changes which are a consequence of the separation of supply and distribution and of the establishment of the Council.
71. *Sections 39 (Competition Commission’s power to veto modifications following report) and 83 (Modification of licence conditions following Competition Commission report)*. These sections enable the Competition Commission to review the Authority’s proposals to modify electricity licences and gas licences (respectively) following the Commission’s report on a reference. If it appears to the Commission that the proposed modifications are not requisite for the purpose of remedying or preventing the adverse effects specified in its report, the Commission is required to substitute its own licence modifications which are requisite for that purpose. These sections set out procedures for the notification by the Commission of its intention to substitute its own modifications and for consultation on the modifications themselves.
72. *Section 41 (Transfer of electricity licences) and 85 (Transfer of gas licences)*. Currently, section 8AA of the 1986 Act permits a licence to be assigned, with the consent of the Director General of Gas Supply, to another party. In deciding whether to consent to assignment of a licence, the Director has to take into account the same considerations as he would take into account if he were granting a new licence to the assignee. There is no corresponding provision in the 1989 Act.
73. These sections provide for a similar procedure (now described as “transfer” rather than “assignment”) to be adopted for both gas and electricity licences. In addition, the opportunity has been taken to amend the procedures set out in section 8AA of the 1986 Act, both to remove procedural hurdles (such as the requirement that the

licence must contain a condition authorising assignment) and to ensure that there is proper consultation in appropriate cases before the Authority consents to a transfer. The purpose is to simplify procedures in cases of restructuring within the industry without removing any necessary consumer protection.

74. *Sections 42 and 87: Reasons for decisions under the 1986 Act and the 1989 Act.* These sections require the Authority and the Secretary of State to give reasons for certain of the key decisions that they take. The sections specify the decisions to which this requirement applies. In these cases, the Authority (or Secretary of State as the case may be) is required to produce a notice giving the reasons for its decision and to publish it in a manner which will bring it to the attention of those likely to be interested. A copy must also be sent to the licence-holder to whose licence, or to whom, the decision relates.
75. *Sections 43 and 88: Altering activities requiring licence or exemption in electricity and gas.* Under the current gas and electricity regimes, neither the Secretary of State nor the regulator has the ability to add to the list of activities prohibited without a licence or exemption, or to remove activities from regulatory control. The only means currently available to achieve this is primary legislation. The purpose of these sections is to introduce more flexibility into the regulatory system to adapt to developments in the structure of the electricity and gas markets. Section 43 covers the case of electricity and section 88 covers gas, the provisions being identical in substance.
76. The effect of the sections will be to give the Secretary of State an order-making power to create new licensable activities for gas and electricity, with certain restrictions, or to remove the need for a licence or exemption. Any order would be subject to the affirmative resolution procedure.
77. The key restrictions on the ability to create new licensable activities are :
- the Secretary of State may only exercise the power at the instigation of the Authority;
 - activities may only become licensable if they are activities connected with those already within the scope of existing licences or exemptions;
 - before the power can be exercised, notice must be given to those carrying on, or intending to carry on the activities in question, and to the Gas and Electricity Consumer Council; and
 - if a reference to the Competition Commission is made as a result of an objection (from a person carrying on or intending to carry on the activities) or for any other reason, the Commission must have clearly concluded that the absence of a licensing requirement for those particular activities operates against the public interest.
78. In the case of a proposal to de-regulate an activity, either the Secretary of State or the Authority may initiate the process. All those likely to be affected, the Council (and in the case of gas, the Health and Safety Executive) must be consulted before any decision to proceed with an Order.

Sections 44 - 50: Duties of electricity distributors

79. *Section 44: Duty to connect on request.* This section replaces the existing sections 16 and 17 of the 1989 Act with three new sections. The new section 16 places on electricity distributors a duty to connect. This duty takes the form of an obligation on a distributor to offer terms for the making and maintenance of a connection between his system and premises when required to do so either by the owner or occupier of the premises or by an authorised electricity supplier acting with the owner or occupier's consent. Electricity distributors are also required to offer terms for a connection to another distribution system run by an authorised distributor at the latter's request. The duty includes an obligation to offer terms for the making and maintenance of a connection to generation equipment.

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

80. The new section 16A establishes the procedural arrangements relating to the duty to connect. These include notification by the distributor to the party wishing to be connected of, among other things, any information he requires in order to be able to offer terms for the connection, his charges and any security he may require in relation to payment. Powers in relation to the setting of charges and the requiring of security are dealt with in sections 46 and 47.
81. The new section 17 establishes the circumstances in which the duty to connect does not arise. This is where:
- the making of a connection is prevented for reasons beyond the distributor’s control;
 - the making of a connection would or might breach electricity safety regulations (and the distributor has done all he can reasonably do to ensure that this would not be the case);
 - it would be unreasonable to expect the distributor to make a connection;
 - to do so would require the powers set out in Schedules 3 and 4 of the 1989 Act and the electricity distributor has not been given those powers in his licence.
82. *Section 45: Abolition of tariffs.* This section repeals section 18 of the 1989 Act. Section 18 provides for tariff supply by public electricity suppliers and its repeal means that all supply will be on the basis of a contract between a supplier and a customer.
83. *Section 46: Power to recover expenditure.* This section amends section 19 of the 1989 Act, so that public electricity suppliers' powers to recover expenditure for the provision of plant and line, in order to make a connection, now apply to distributors.
84. *Section 47: Power to require security.* This section amends section 20 of the 1989 Act, so that public electricity suppliers' powers to require security for payment in respect of the provision of plant or line to make a connection apply to distributors. The deletions of subsections (2) and (4) are consequential amendments, since both subsections relate to supply rather than to distribution.
85. *Section 48: Additional terms of connection.* This section amends section 21 of the 1989 Act so that it relates to the provision of a connection by a distributor rather than, as before, to supply by a public electricity supplier. It provides that the distributor may, when offering terms for the making and maintaining of a connection under section 16A, require the person requiring the connection to accept:
- any restrictions made necessary by the Electricity Supply Regulations made under section 29 of the Act;
 - any terms which it is reasonable in all the circumstances for that person to be required to accept; and
 - any terms relating to economic loss arising from negligence which it is reasonable in all the circumstances for that person to be required to accept.
- The second of these provisions is likely to be of particular relevance in the case of large and complex connections where the coverage of the terms offered by the distributor is likely, of necessity, to go substantially wider than the matters dealt with explicitly in section 16A.
86. *Section 49: Special agreements with respect to connection.* This section replaces the existing section 22 of the 1989 Act. It provides that a distributor and a person requiring a connection may enter into a “special connection agreement” under terms agreed between them which might not include those terms which are stipulated for inclusion in any agreement under section 16A of the 1989 Act (as inserted by section 44 of this Act).
87. *Section 50: General duties of electricity distributors.* This section sets down the general duties of licensed electricity distributors in respect of the development of their systems

and the use of them to facilitate competition in supply and generation (including embedded generation). These duties are the same as those which already apply to holders of electricity transmission licences. The existing reference to the general duties of public electricity suppliers is repealed.

Sections 51 – 53, 84 and Schedules 4 and 5: Electricity licence holders (and ‘The gas code’)

88. *Section 51: The electricity code.* This section paves the way for Schedule 4.
89. *Schedule 4: Schedule to be substituted for Schedule 6 to the 1989 Act.* The schedule replaces Schedule 6 of the Electricity Act (‘The Public Electricity Supply Code’) with a revised schedule (‘The Electricity Code’). Schedule 6 deals largely with rights of entry to premises and powers of disconnection. It applies to public electricity suppliers only.
90. The revisions are mainly consequential and are needed because:
- the Act ends the concept of a public electricity supplier and separates the activities of supply and distribution; and
 - the various rights and obligations contained in the old schedule do not apply uniformly to supply and distribution and must be distributed between the two separate activities.
91. In general, the changes provide that distributors have rights of entry in relation to electric line and plant, because plant and line is part of distribution. Suppliers are to have rights of entry in relation to non-payment of supply charges and to meters and metering, because metering is an adjunct of the activity of supply and not distribution.
92. There are four changes which are not just consequential:
- a supplier may install a pre-payment meter as an alternative to disconnection where a customer has not paid his supply charges;
 - a supplier may only disconnect premises for non-payment of supply charges owed for supply to those premises;
 - a distributor may not disconnect premises for non-payment of the costs of connecting the premises to his distribution system; and
 - there are provisions for deemed contracts between customers and suppliers, which will apply where a contract has not been expressly agreed, and for distributors to recover the value of electricity illegally taken from a distribution system.
93. *Section 52: Amendment of Schedule 7 to the 1989 Act.* This section brings into effect Schedule 5, which amends Schedule 7 of the 1989 Act on the use of electricity meters.
94. *Schedule 5: Electricity metering.* Paragraph 2 makes a technical change to Schedule 7 of the 1989 Act to reflect the new definition of authorised supplier inserted into the 1989 Act (see paragraph 38(2) of Schedule 6 of this Act). Paragraph 2(2) deletes the current interpretation of “electricity supplier” previously contained in paragraph 13 of Schedule 7. Any reference to the term “electricity supplier” now means a licensed electricity supplier whereas “authorised supplier” means someone authorised either by licence or exemption. The changes do not affect the coverage of Schedule 7.
95. Paragraph 3(2) allows the Authority to make regulations allowing for exceptions to the general rule that where electricity is charged for by reference to quantity supplied, such supply must be given through an appropriate meter. This is intended to cover “virtual meters” which are used for calculating electricity charges for appliances such as street lights. Paragraph 4 provides that any such regulations may also provide that in such cases, no offence is committed under paragraph 3 of Schedule 7.

96. A supplier is generally responsible for providing a meter and related services such as maintenance of the meter. However, the customer may choose to procure one from someone other than the supplier (with the latter's permission). Paragraphs 3(3) and 7 of Schedule 5 distinguish more clearly between these two circumstances than the existing wording in paragraphs 1 and 10 of Schedule 7.
97. Paragraphs 3(4) and 3(5) are intended to apportion metering responsibilities appropriately, given the ending of the concept of "public electricity supplier". Paragraphs 5 and 6 do the same, in relation to those who may be authorised to test meters and take on the responsibilities which that entails. In future, the Authority may authorise anyone whom it sees fit, including, if it wishes, companies which used to be part of a public electricity supplier.
98. The 1989 Act contains a prohibition on the use of a pre-payment meter for the recovery of charges other than those owing for the supply of electricity, the provision of a meter, or the provision of plant and line. Provision of plant and line will in future be a matter for distributors and not suppliers. Paragraph 8 provides that pre-payment meters may only be used to recover charges in respect of the supply of electricity to the premises where the meter is installed, and the provision of the meter (and not the provision of plant or line).
99. *Section 84: The gas code.* Subsection (2) introduces into gas a prohibition on the use of pre-payment meters for recovery of non-supply charges, similar to that in electricity.
100. Subsection (3)(b) and (c) allow a supplier to fit a pre-payment meter as an alternative to disconnection for non-payment of charges but remove the right to demand a deposit (or fit a pre-payment meter if a deposit is not provided). The intention is to have similar regimes in electricity and gas. (See paragraph 2(1)(a) of the new Schedule 6 to be inserted into the 1989 Act by Schedule 4 to this Act). One difference between electricity and gas is that after the fitting of a gas pre-payment meter, it is necessary to purge and test appliances before they can be used. Subsection (4) extends licensees' rights to enter premises under warrant to cover these operations.
101. *Section 53: Powers of licence holders.* Section 10 of the 1989 Act gives effect to Schedules 3 and 4. These schedules confer substantial powers which impact on the rights of third parties: the compulsory purchase of land; street works; protection from electrical interference; the acquisition of wayleaves; the felling and lopping of trees; and the entry upon land for the purposes of exploration. The new section amends section 10 to reflect the creation of the licensable activity of distribution and to remove references to public electricity suppliers. Subsection (2) of this section allows for these powers to be made available to electricity distributors to the extent specified in their licences. Subsections (3) and (5) are consequent upon the changes made to section 6 of the 1989 Act by section 30.
102. Subsection (4) inserts a new subsection (3A) into section 10 of the 1989 Act in order to allow the powers in Schedule 4 of that Act (principally relating to streetworks) to be available to licence holders wishing to develop cooling systems based on combined heat and power generation.

Sections 54 – 58 and 89 – 94: Electricity and gas performance standards

103. The existing performance standards provisions in gas differ in scope from those in electricity. The ability to set performance standards for the gas sector is also time-limited by a "sunset provision" in section 10 of the Gas Act 1995. The main purpose of these sections is to provide the Authority with powers which are not time limited, and which are the same for gas and electricity, to set standards of performance which companies should meet in dealing with consumers.
104. The scope of the existing powers is being extended to include all licensed (but not exempt) suppliers of electricity (currently only public electricity suppliers - "PES's")

- are covered); licensed distributors of electricity (PES distribution arms are covered by the current legislation); and licensed gas transporters. The provisions cover all companies which may come into direct contact with consumers, and do not distinguish between ex-PES suppliers and distributors and others. Some distribution activities, such as restoring supply after a fault, are currently subject to performance standards. The Authority will continue to be able to set such standards. In gas, similar functions are carried out by transporters, and so the powers will be extended to cover them.

105. At present, performance standards may only be set with regard to the activities of companies which affect domestic customers in gas (Gas Act 1995 section 33A) and tariff customers in electricity (section 39 of the 1989 Act). The powers are to be aligned so as to cover, in principle, all customers and potential customers in each sector.
106. In gas, the current provisions are due to lapse as a result of the “sunset section” in section 10 of the Gas Act 1995. To date, the gas regulator has not used these powers, relying instead on licence conditions to set broadly similar standards. Equivalent powers have, however been used in electricity, and section 89 provides for the continuation of the powers in the gas sector.
107. These sections set out procedural requirements that apply to the Authority in relation to the exercise of its powers to set performance standards in both the gas and electricity sectors. They require the Authority, prior to setting new performance standards, to conduct appropriate research and to consult on the basis of a notice giving the Authority's reasons for proposing the new standards.
108. One of the Act's broader purposes is to ensure that customers should only need to have contacts with suppliers and should not have to deal with distributors or transporters. Therefore, subsection (4) of the new section 39A of the 1989 Act (inserted by section 54 of the Act) and subsection (5) of the new section 33AA of the 1986 Act (inserted by section 90 of the Act) provide for compensation from distributors or transporters to reach customers via the relevant supplier. Similarly, subsection (2)(b) of section 42A of the 1989 Act (as substituted by section 58) and subsection (2)(b) of section 33D of the 1986 Act (as substituted by section 94) provide for information about the performance of distributors or transporters against the standards to be passed to customers via suppliers.

Sections 59 - 60, and 95 - 96: Enforcement of obligations of electricity and gas licence holders

109. *Sections 59 and 95: Financial penalties.* These sections apply respectively to the electricity and gas sectors. They introduce a power for the Authority to impose financial penalties on companies for past and current contraventions of their licence conditions, of other specified statutory requirements, and of standards of performance (both overall - i.e. aggregate - standards and standards set to apply in individual cases). The power gives the Authority an additional mechanism for ensuring compliance with these conditions, requirements and standards of performance, and for deterring future contraventions. The power does not apply to contraventions committed before the power comes into effect. Receipts from financial penalties will be paid into the Consolidated Fund.
110. The new power will operate alongside the Authority's existing powers to make orders requiring compliance where non-compliance is continuing or likely, but is not to be tied to them. Hence, a financial penalty may be imposed alongside a provisional or final order, or equally, where no enforcement order has been issued (this might be, for example, where a contravention has already taken place but did not come to the Authority's attention at the time). Where enforcement action has been initiated, penalties can only be imposed within specified periods after the making or confirmation of enforcement orders. Otherwise, penalties can only be imposed within a 12 month period after the contravention in question unless notice of intention to impose a penalty or of investigation of the contravention are served within that period.

111. The penalty will be limited to an amount which is reasonable in all the circumstances of the case, but which cannot in any case exceed 10% of the turnover of the licence holder. The relevant definition of turnover will be set out in an order to be made by the Secretary of State by affirmative resolution. The Authority cannot impose a penalty under these provisions where it is satisfied that the most appropriate way of proceeding is under powers in the Competition Act 1998. In addition, the Authority is to be required to consult on and publish its policies with regard to the imposition and amount of a penalty, and then to take account of those policies. The company may apply to the Authority to pay a penalty in instalments.
112. There are procedural requirements to be followed for the imposition of a penalty. These include:
- requirements on the Authority to publicise its intentions, give notices with prescribed information, and receive and consider comments from interested parties;
 - procedures for modifying the penalty in the light of representations; and
 - procedures for notifying the company concerned and interested parties of the final decision on the imposition of a penalty.
113. The company may also make an application to the court to challenge the validity of a penalty order on certain prescribed grounds. The grounds are that procedural requirements have not been followed and that this has substantially prejudiced the company's interests, or that the imposition of the penalty, including its amount, was not within the Authority's powers. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the timescale to pay. It may also require interest to be paid on the penalty, including on a reduced penalty.
114. In the gas sector, the existing power to impose a monetary penalty as part of a final order imposed by the regulator under section 28(7A) of the 1986 Act as amended, which is superseded by the new power, is repealed.
115. *Sections 60 and 96: Licence enforcement.* These sections which apply to electricity and gas respectively, make minor amendments to existing enforcement provisions to give the Authority greater discretion to make enforcement orders in certain situations where they would previously have been precluded from doing so. They also accelerate the enforcement process by reducing the period for making representations in response to a notice of intention to make an order from 28 days to 21 days. This aligns the time periods for making representations in relation to enforcement orders with those which apply in relation to financial penalties. The changes will not apply to orders made before the entry into force of the new provisions.
116. At present, the regulator cannot make or confirm an enforcement order in respect of a contravention where he is satisfied that he is precluded by his general duties from doing so; where the company has agreed to take and is taking steps to remedy the contravention; where the contraventions in question are trivial; or where he is satisfied that the Competition Act 1998 is the most appropriate way of proceeding. The Act changes this prohibition on action into a discretion not to take action in cases where the contravention was trivial or where the company was taking steps to comply. The Authority will not be compelled to make an enforcement order in such circumstances, but would be able to do so if it considered it appropriate.

Section 61 and 97: Remuneration and service standards

117. The intention of these sections, which apply to the electricity and gas sectors respectively, is to achieve transparency as to the relationship between directors' remuneration and customer service standards in markets which are not fully competitive. The sections require utility companies that provide any price-regulated services to disclose whether or not they link the remuneration of the directors of their

price-regulated businesses to levels of customer service attained in these businesses, and to give details of how any links affect remuneration.

118. The sections insert new sections, identical in their effect, into the 1986 and 1989 Acts. Subsections (2) - (4) of the new sections require the disclosure described above to be made as soon as reasonably practicable after the end of the disclosing company's financial year, and specify what information must be disclosed. The intention is that the information should enable anyone inspecting it to understand the relationship between the level of service provided and directors' remuneration, including how the company decided what level of service had been achieved.
119. Subsections (5) and (6) of the new sections require price-regulated companies, when they make their disclosures about the last financial year, to state the links between directors' remuneration and service standards that are in place for the current financial year. If they have no links, but have decided to introduce them in future, they must describe these. If the current or planned links are different from last year's, then the company must explain what differences may be expected to result from the change.
120. Under subsections (7) and (8) of the new sections, licence-holders will have to make their disclosures in a form with which the Authority is content, and publish them. The Authority can also publish them, though the intention is that it would not do so unless it felt that the publication by the company was in some way unsatisfactory (for example, because it was not accessible enough).
121. Subsection (10) of the new sections defines certain terms used. Definitions include:
 - "activities subject to price regulation": the intention is to cover price regulation which constrains companies' freedom to raise prices, of the sort imposed because a company is not exposed to full competition. Price controls such as RPI - X (whether on a single service or basket of services) are thus included, as are specified maximum prices. On the other hand, other sorts of price regulation, for example an obligation to charge the same price throughout a geographic area, are not covered by the definition;
 - "remuneration": this includes all the remuneration received by a director from the price-regulated company including pension benefit;
 - "service standards": the sections apply to any standards of customer service imposed by the Authority or the Secretary of State, as well as any which the company may have set itself.

The Authority is to enforce the disclosure requirement, in the same way as if it were a licence condition.

Sections 62 - 67: Electricity from renewable sources

122. These sections replace the Secretary of State's powers to impose obligations designed to promote the generation of electricity from non-fossil sources with a power for the Secretary of State to impose obligations in relation to renewables generation only (i.e. excluding nuclear and fossil generation) on all licensed electricity suppliers. An obligation will be based on the requirement that a proportion of total supply of electricity to consumers must be renewable electricity.
123. *Section 63: Orders under section 32: supplementary.* This section (together with section 62) provides flexibility in imposing an obligation in relation to its duration and size, including the possibility that it can increase or decrease over time, that a proportion of an individual supplier's obligation may be carried forward or back into another period, the types of generation that may be used in its fulfilment, and the provision of information necessary to set and determine the fulfilment of suppliers' individual obligations.

124. *Section 64: Green certificates.* This section introduces the concept of ‘green certificates’, which will be tradable certificates of the production and supply of renewable electricity issued by the Authority, the possession of which will count towards a supplier’s obligation.
125. *Section 65: Alternative ways of discharging renewables obligation: payments.* This section provides an alternative way of meeting an obligation by making a payment to the Authority. The Authority must pay the amounts received to electricity suppliers in line with a system of allocation specified by the Secretary of State.
126. *Section 67: Supplementary.* This section provides powers for the Secretary of State to make orders for the purpose of ensuring the continuation of outstanding contracts entered into by the public electricity suppliers with renewables generators in compliance with non-fossil fuel orders (in Scotland, Scottish renewables orders) made under section 32 of the 1989 Act. In particular it will enable provision to be made for the continuation of the fossil fuel levy with respect to the outstanding contracts and for the transfer of the contracts themselves from the public electricity suppliers to nominated successors.

Sections 68 – 73 (electricity), Sections 98 - 99 and 102 (gas) and Section 103 (overall energy efficiency targets): Miscellaneous

127. *Section 68: Modification of licences: electricity trading arrangements.* This section provides a power for the Secretary of State to modify electricity licences and the standard conditions of electricity licences for the purpose of implementing the new electricity trading arrangements. (These are set out in ‘The New Electricity Trading Arrangements – OFGEM/DTI Conclusions Document’ published in October 1999. The document can be accessed on the OFGEM website – <http://www.ofgem.gov.uk/elarch/netadocs.htm>.) The power will be exercisable at any time within a period of two years from the passing of the Act.
128. *Sections 69 and 98: Assistance for disadvantaged groups of electricity and gas customers.* These sections which apply to electricity and gas respectively insert new sections into the 1986 and 1989 Acts permitting the Secretary of State, by order, to make schemes which have the effect of providing a cross-subsidy in favour of disadvantaged customers in relation to the charges they pay for their electricity or gas. This is intended to be a reserve power. The sections provide for consultation on any proposal to make an order; for the information necessary for the running of any schemes to be passed between the various parties; and for the Authority to have a role in monitoring and reporting on the operation of the schemes and enforcement of breaches of them.
129. *Sections 70 and 99: Energy efficiency requirements for electricity distributors and suppliers and for gas transporters and suppliers.* These sections replace the existing provisions of the 1986 and 1989 Acts which allow the relevant Directors-General to impose standards of performance on gas suppliers and public electricity suppliers in connection with the promotion of the efficient use of gas and electricity by consumers. The new sections provide that the Secretary of State, rather than the Authority, may make orders imposing obligations on licensed gas and electricity suppliers, gas transporters and electricity distributors, to meet targets for the promotion of improvements in efficiency in consumers’ use of energy. A target will be the achievement of the saving of a specified amount of energy. There is provision to specify the way in which the amount of energy that will be saved by a given activity will be calculated. It will be for the licensee concerned to choose the activities (for example installations of home insulation or promoting the use of energy efficient appliances) it will undertake to meet the required energy saving. The Authority is to be responsible for the calculation and enforcement of the requirement, using its normal enforcement powers, including monetary penalties.
130. *Section 103: Overall energy efficiency targets.* This section allows the Secretary of State to set an overall energy efficiency target which covers both gas and electricity,

which would be apportioned between the separate obligations under section 70 (energy efficiency requirements for electricity) and section 99 (energy efficiency requirements for gas).

131. *Section 71: General duties of transmission licence holders in Scotland.* Section 9(2) (b) of the 1989 Act imposes on any holder of a transmission licence a duty to facilitate competition in the supply and generation of electricity. Subsections (3) and (4), however, qualify this duty in the case of persons in Scotland who hold both a transmission licence and a licence to supply or to generate electricity. In the case of any such person, the duty is to make the transmission system available to competitors on terms which neither prevent nor restrict competition.
132. As competition in the Scottish market has developed it is thought that there is no longer any justification for treating transmission companies in Scotland on a different basis from the transmission company in England and Wales. This section therefore repeals subsections (3) and (4) of section 9.
133. *Section 72: Uniform prices etc: Scotland.* Section 2(2) of the 1989 Act puts the Director under an obligation to ensure that the prices charged to tariff customers in any area of Scotland specified in an order by the Secretary of State do not discriminate (whether directly or indirectly) between different parts of that area (the so-called "Common Tariff Obligation"). The abolition of tariffs effected by this Act means that the desired effect of ensuring that remote Scottish areas do not suffer discrimination can no longer be achieved in this way. Instead, this section provides a power for the Secretary of State to make orders requiring holders of transmission, distribution, and supply licences to charge prices and, in the case of suppliers, to offer contract terms which do not discriminate between customers in different parts of the specified area. The existing Common Tariff obligation is limited to tariff customers: essentially domestic and small business users. It is expected that the orders to be made under this section will be restricted to a broadly similar group of consumers (by virtue of the power in sub-section (4) to make different provisions for different cases).
134. *Sections 73 and 102: Maximum prices for reselling electricity and gas.* The existing provisions in the 1989 Act and the 1986 Act share the overall objective of preventing excessive prices being charged when electricity or gas is resold (e.g. by landlords to tenants), but differ in their details. These sections reconcile the differences so that the powers granted to the Authority are the same for the two fuels (except for the exemption for gas used for propelling motor vehicles).
135. *Section 73* makes the power in the 1989 Act more flexible:
- instead of having to fix actual prices, the Authority will be able to set a formula by which maximum prices are calculated;
 - the Authority may direct that interest be paid on sums charged in excess of the maximum price, and not just the value of the overpayment itself as at present; and
 - the Authority may direct that resellers provide information on their prices to purchasers (and the Authority may direct that the maximum price be reduced by an amount or percentage if the reseller fails to comply with this requirement).

These three changes align electricity with the relevant aspects of the current position in gas.

136. *Section 102* changes the existing duty on the regulator to set maximum resale prices in gas into a power. This will allow the Authority to choose not to set a maximum resale price in relation to certain suppliers which may be useful where, for example, supply is unmetered. It also extends the ambit of the current power to include gas originally supplied by an exempt supplier (at present only gas supplied by a licensed supplier which is subsequently resold is covered). Both of these matters are already covered in the parallel electricity legislation.

Part V: Amendment of the Gas Act 1986

Sections 74 - 88: Gas licensing

137. The commentary on *section 74* (Gas licensing conditions) and *section 75* (Exceptions from section 5 of the 1986 Act) is provided in paragraphs 50, 51 and 55 above.
138. *Section 76 (and Schedule 6, paragraphs 1 - 4 and 18): Gas transporters.* This section ends the geographic exclusivity of public gas transporters (“PGTs”) and makes consequential changes to certain procedures. Section 7(2)(a) of the 1986 Act has the effect that any given area may only be within the “authorised area” of one public gas transporter, so that only that PGT may convey gas to premises through pipes in that area. In other words, PGT licences are currently geographically mutually exclusive. The main purpose of this section is to end that exclusivity (with the intention of promoting competition and, in this respect, to comply with the EC Gas Directive (98/30/EC)). The amendments to section 7(2)(a) of the 1986 Act in subsection (3) of section 76 achieve this purpose by removing the reference to PGT licences relating to areas which are not specified in the licences of other PGTs.
139. Subsection (6) repeals section 7(7) of the 1986 Act, so that a gas transporter may, if it wishes, apply for a licence covering a large area (e.g. all of Great Britain) without being required to prove that it intends to operate in every part of that area. The change will enable transporters to apply once for a licence covering a large area, rather than having to request piecemeal extensions only when able to prove the intent to operate in each particular area. Securing a licence for a large area does not preclude other licensees from operating in and laying pipes within that area.
140. Subsection (5) removes from the face of the 1986 Act the procedures to be followed when granting an extension, thus allowing greater procedural flexibility. The procedures to be followed when first granting a licence remain on the face of the Act. Subsection (6) also repeals section 7(8) of the 1986 Act. This is discussed further under section 78 below.
141. Subsection (4), in conjunction with paragraph 6 of Schedule 6, is intended to allow the authorised area of a transportation licence to be restricted. In other words, it can be made smaller, as well as extended, as is the case with other types of licence.
142. Subsection (7), in conjunction with paragraphs 1 – 4 and 18 of Schedule 6, changes the term “public gas transporter” to “gas transporter”, to reflect the fact that the sector is open to competition.
143. *Section 77: Restriction on use of certain pipelines for providing a supply of gas.* Under the system of geographic exclusivity, it was possible for a transporter to construct a pipe outside his authorised area (and thus in the authorised area of another transporter, the “incumbent”), not for the purpose of supplying premises but in order to convey gas through the other transporter’s area. In the absence of restrictions on its use, such a “pass-through” pipe could be used for supplying premises (i.e. might be a “relevant main”), thus posing a threat to the incumbent who may not have organised his business accordingly. This section, which is a transitional measure only, provides that the consent of the incumbent transporter is required if a pass-through pipe, which was built before the abolition of geographical exclusivity, is to be used for giving a supply. If the incumbent refuses consent or fails to give it, the Authority may intervene. Once it has been declared to be a relevant main, certain rights of consumers, and rights and duties of the transporter (for example the duty to connect), arise in respect of it which should not be taken away, and so subsection (3) does not allow the incumbent’s consent to be withdrawn after it has been given.
144. *Section 78: Construction of pipelines by gas transporters.* This section concerns what is known as the “23 metre rule”. Currently, the authorised area of one transporter may not include areas within 23 metres of a main belonging to another transporter, unless the

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incumbent agrees or else certain conditions are met. When authorised areas are able to overlap completely, as provided for in section 76 above, they may include areas within 23 metres of someone else's mains. The 23 metre rule in subsection (8) of section 7 of the 1986 Act, will therefore be repealed by section 76(6). This section introduces a new version of the rule.

145. Subsection (2) contains a general prohibition on constructing pipelines within 23 metres of another gas transporter's pipeline, unless certain conditions are met. If the transporter is proposing to construct a service pipe because he needs to do so in order to comply with his duty to connect, the prohibition does not apply (and nor do the other requirements in 22A(1)). If the pipeline is to be constructed within 23 metres of an ordinary pipeline of another transporter (which, broadly, is a pipeline other than a main which is being used to give a supply to premises), the existing duties in section 22A to consult and notify the other transporter will apply. If the pipeline is to be constructed within 23 metres of another transporter's main, then in addition to those duties, the other transporter's consent to the construction will be required (except in the circumstance described in the next paragraph).
146. Under the existing 23 metre rule, if the incumbent refuses consent to another transporter's authorised area being within 23 metres of his main, the regulator can over-ride him, and give consent anyway, subject to a number of tests. Under the new rule, subsection (1C) empowers the Authority to over-rule a refusal or failure to give consent by an incumbent "where it considers it appropriate to do so". The Authority, in making a decision on any such case, must have regard to its general duties.
147. The incumbent will be able to place conditions on the construction of the new pipeline, including conditions as to the future use of the pipeline (for example, that it may not be used to give a supply). If the transporter constructing the pipeline objects to such conditions, the Authority can either accept them or over-ride them in their entirety if it feels that they are unfair, but it may not modify them. If the incumbent neither consents nor refuses to consent, then the Authority can effectively treat that as a refusal of consent and then over-ride it. These aspects are covered by subsections (1B), (1C) and (1D).
148. Subsection (1E) provides that if the two transporters agree to conditions, but then the one who has laid the pipe breaks them, then the other transporter can take civil proceedings to rectify the breach or obtain appropriate compensation. The conditions are not subject to enforcement by the Authority by way of enforcement orders and cannot give rise to financial penalties under the Act.
149. *Section 79: Duty to facilitate competition.* The principal purpose of this section is to place on gas transporters a positive duty to facilitate competition in the supply of gas. This is similar to the duty in electricity already placed on transmitters and to be placed on distributors. Under the 1986 Act, transporters are under a duty "to avoid any undue preference or undue discrimination in the connection of premises to any pipeline system operated by him or in the terms on which he undertakes the conveyance of gas by means of such a system" but are not under a positive duty to facilitate competition in supply as introduced by this section.
150. The section extends the existing duties on a gas transporter to connect premises contained in section 9(1) and (2) of the 1986 Act. These duties currently require the transporter to comply, so far as it is economical to do so, with any reasonable request for him to connect premises to his pipeline system, and to "avoid any undue preference or undue discrimination" in the terms of connection. These duties now apply equally when the request is made by another transporter, whether licensed or exempt, who wishes to connect a system to the existing system.
151. *Section 80: Gas transporters' duty to make a connection.* The provisions in this section clarify that when pipes laid by the owner of premises ("self-lay" pipes) vest in a transporter on connection to the latter's system, the responsibility for maintaining the reinstatement of the ground containing the pipe, and any other liabilities, also vest in

him (see subsections (4) and (5) which amend section 10 of the 1986 Act). Subsection (2) inserts a new subsection 3(A) into section 10 which allows the transporter to protect himself if, for example, the owner has not sought the necessary permissions. The subsection gives the transporter the right to require self-layers to accept terms indemnifying him in respect of such liabilities in connection with the laying of the pipe which it is reasonable in all the circumstances for the self-layer to be required to accept. Subsection (3) clarifies that transporters can charge for making connections between their systems and self-lay pipes.

152. The commentary on *section 81*: (Standard conditions of gas licences); *section 82* (Modification of standard conditions of gas licences); *section 83*: (Modification of licence conditions following Competition Commission report); *section 85*: (Transfer of gas licences); *section 86*: (Exemptions from gas licensing); *section 87* (Reasons for decisions); and *section 88*: (Altering activities requiring gas licence) is provided in the 'Electricity licensing' section (paragraphs 48 – 78 above).
153. The commentary on *section 84* (The gas code) is provided in the 'Electricity licence holders' section (paragraphs 99 - 100 above).

Sections 89 - 94: Gas performance standards

154. The commentary on these sections is provided alongside the equivalent provisions for electricity (paragraphs 103 – 108 above).

Sections 95 - 96: Enforcement of obligations of gas licence holders

155. The commentary on these sections is provided above alongside the equivalent provisions for electricity (paragraphs 109 – 116 above).

Section 97: Remuneration and service standards

156. The commentary on this section is provided alongside the equivalent provisions for electricity (paragraphs 117 – 121 above).

Sections 98 - 102: Miscellaneous

157. The commentary on sections 98 - 99 is provided alongside the equivalent provisions for electricity (paragraphs 127 – 128 above).
158. *Section 100: Exercise of power to make regulations.* This section amends the 1986 Act so that regulations made by the Authority under Part I of that Act are not subject to Parliamentary approval. This is in line with the principle of arm's length regulation by the regulatory authority and aligns the procedure with that which currently applies in the 1989 Act.
159. *Section 101: Standards of gas quality.* The present regulatory regime does not provide for the regulation of gas quality issues which do not have a significant safety aspect but which may nevertheless have a substantial impact on consumers. This section addresses the gap by conferring on the Authority a power to make regulations regulating the quality of gas which may be conveyed by gas transporters to premises or to pipeline systems operated by other gas transporters in relation to pressure and purity, and other standards with respect to the properties, condition and composition of gas so conveyed.
160. The Authority's exercise of this power will be subject to the consent of the Secretary of State. The Authority is to be required to consult such persons and organisations as it considers appropriate before making any regulations.
161. The Health and Safety Executive has, and will retain, a power to regulate gas quality insofar as safety may be affected. The new power for the Authority will ensure that there is no regulatory gap in relation to non-safety issues of gas quality. The duty on the Authority to consult the Health and Safety Executive on safety matters should

ensure that, where a gas quality issue has both safety and non-safety aspects, the issue is identified and addressed by the appropriate body.

162. The commentary on [section 102](#) is provided alongside the equivalent section for electricity (paragraphs 134 – 136 above).

Part VI: Miscellaneous and Supplementary

Sections 103 - 105: Miscellaneous

163. [Section 104: Specialist members of the Competition Commission](#). This section provides for the abolition of the Competition Commission's electricity panel and its replacement with a specialist gas and electricity panel. The Secretary of State will be responsible for appointing at least six specialist members of the Competition Commission for the purpose of the Commission's functions in relation to gas and electricity licence modification references or references relating to licensable activities. The chairman of the Commission will be obliged to select one or more of these specialist members to serve on any group carrying out such functions.
164. [Section 105: General restrictions on disclosure of information](#). This section substantially reproduces, and replaces, the existing general restrictions (which differ in some respects from each other) on disclosure in section 42 of the 1986 Act, and section 57 of the 1989 Act. The new section provides that unauthorised disclosure of information obtained under the Act, or under Part I of the 1986 Act or Part I of the 1989 Act, is a criminal offence. It includes a number of exceptions, where disclosure is permitted. Generally these exceptions are for disclosures from one regulatory authority to another for the purpose of facilitating the performance of the other authority's statutory functions.

Sections 106 – 110 and Schedules 6 - 8: Supplementary

165. [Section 107](#) makes provision for Parliament to fund expenditure resulting from changes introduced by the Act. [Section 108 and Schedules 6, 7 \(see below\) and 8](#) deal with consequential amendments, transitional provisions, savings and repeals. [Section 109](#) gives the Secretary of State the power to make any necessary transitional provisions and savings.
166. [Schedule 7: Transitional provisions and savings](#). [Part 1](#) of schedule 7 provides a mechanism to facilitate the legal separation of electricity supply and distribution, by enabling suppliers to make schemes to transfer their property, rights and liabilities to new nominated companies. Such transfer schemes are subject to the approval of the Secretary of State, who may modify them before giving approval.
167. The provision also has the effect of enabling the Scottish utility companies to use schemes to transfer their generation and transmission activities, as well as supply and distribution, into separate companies, in order to further the development of competition in the Scottish market.
168. [Part II](#) of the schedule provides for the Secretary of State to make licensing schemes in respect of gas and electricity licences. They are necessary in order to ensure the continuity of licensing for those holding licences granted under the 1986 Act and the 1989 Act at the time that this Act was passed. They also provide the vehicle by which the standard conditions of licences, which are to be determined and published by the Secretary of State under sections 33(1) (electricity) and 81(2) (gas), will be incorporated into such licences. [Part III](#) requires schemes to be made to determine the terms and conditions to be incorporated into contracts between the successors to the public electricity suppliers and customers formerly taking a tariff supply from the PESs. There are provisions for the Authority to make a scheme where the supplier fails to do so.

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169. Part IV provides for other miscellaneous transitional provisions relating to the Authority and Council.