

ENERGY ACT 2008

EXPLANATORY NOTES

Part 5: Miscellaneous

Duties of Gas and Electricity Markets Authority Summary and Background

431. The Electricity Act 1989 and Gas Act 1986 set out the general duties of the Secretary of State and the Authority. These general duties are formed in a hierarchy of a primary duty and a number of secondary duties and other issues which they must keep under consideration in exercising their primary duty. The primary duty is to protect consumers through competition where appropriate.
432. Prior to this Act, the formulation of secondary duties placed the need to ensure security of supply, and that licence holders are able to finance their activities at the top of the list of secondary duties. The duty to promote sustainable development was added near the end of that list. However, since that time, sustainability has been growing in importance in energy policy. The Act makes amendments to the duties to reflect this, to put sustainability and security of supply on an equal footing in the hierarchy of secondary duties.

Commentary on Sections

Section 83: Duties of the Gas and Electricity Markets Authority

433. This section amends the duties of the Secretary of State and the Authority in sections 4AA of the Gas Act 1986 and 3A of the Electricity Act 1989 in two ways.
434. *Subsection (1)* amends subsection 4AA(1) of the Gas Act to add the words “existing and future” before “consumers” in the principal objective set out in this section. The principal objective requires the Secretary of State and the Authority, in carrying out their functions under Part 1 of the Gas Act, to protect the interests of consumers wherever appropriate by promoting effective competition. This section emphasises the need for the Secretary of State and the Authority to take the needs of tomorrow’s consumers into account as part of the principal objective.
435. Section 4AA(2)(b) of the Gas Act specifies the issues which the Secretary of State and the Authority must have regard for in carrying out their functions in the manner best calculated to further the principal objective. *Subsection (1)* inserts a new provision into this section of the Gas Act, requiring the Secretary of State and the Authority to have regard to the need to contribute to the achievement of sustainable development. This has the effect of moving the sustainable development duty up the “hierarchy” of secondary duties and means that the Secretary of State and the Authority will need to consider sustainable development, as well as security of energy supply and licensees’ ability to finance activities, under section 4AA(2).
436. *Subsection (2)* makes the same changes to the principal objective in section 3A(1) of the Electricity Act and inserts the same provision concerning sustainability at section 3A(2) (b) of the Electricity Act.

437. [Schedule 5](#) repeals the existing sustainability duty in section 4AA(5)(ba) of the Gas Act and section 3A(5)(ba) of the Electricity Act.

Transmission Systems

Summary and Background

438. Electricity generators (including new renewable energy generators) are facing significant delays in obtaining access to the transmission system and the system is not being used as efficiently as possible. The backlog of generators waiting for a connection date is affecting Great Britain's ability to meet security of supply concerns and sustainability targets including the 2020 renewable energy targets set by Europe. There is currently in excess of 45GW of new generating capacity in the transmission grid access queue (compared to around 80GW already connected) with some generators being informed that they must wait until 2022 for connection to the transmission system.
439. The Government has been undertaking work to address these problems. The 2007 Energy White Paper committed the Government and the Authority to consider these issues in a review of transmission access. The final report of the Transmission Access Review was published in June 2008. It concluded that there was a need for significant reform of the licence conditions and industry codes which set the framework for the running of the transmission system by National Grid in Great Britain.¹ The main industry code which regulates access to the transmission network is the Connection and Use of System Code (CUSC) and at present it does not facilitate timely access to the network. The Security and Quality of Supply Standard (SQSS) and CUSC together regulate the planning and operation of the transmission system and at present do not ensure efficient use of the system.²
440. As a result of the Transmission Access Review report, industry has been tasked with developing proposals to reform industry codes to improve the allocation of access rights and the efficient use of the network. The current aim is for the changes to be implemented from April 2009, with some of the more complex reforms being made from April 2010.
441. Due to the importance of these negotiations being completed in a timely manner, the Government made clear in the Transmission Access Review report that if Industry and the Authority did not make sufficient progress by the end of the year then Government would "*consider options for wider reform (including legislation) to bring about the necessary changes in the context of its Renewable Energy Strategy and wider energy policy goals*". The following sections provide the Secretary of State with powers to amend the appropriate licences and industry codes should the industry process fail.

Commentary on Sections

Section 84: Power to amend licence conditions etc: transmission systems

442. This section gives the Secretary of State the power to modify, for the purposes described below:
- a particular electricity generation, transmission, distribution or supply licence (*subsection (1)(a)*);
 - standard licence conditions of those types of electricity licence (*subsection (1)(b)*); and
 - documents maintained under the licence conditions of relevant electricity licences – for example, industry codes (*subsection (1)(c)*).

¹ <http://www.berr.gov.uk/files/file46774.pdf>

² Note that there are no significant problems in terms of physical connection to the network i.e. connecting a line between a wind farm and the grid, the problems instead relate to getting the subsequent commercial right to access and use the transmission network from National Grid.

443. *Subsection (2)* sets out the scope of the modification power. The power may only be exercised for the purpose of facilitating access to and/or efficient use of a transmission system in Great Britain or offshore waters.
444. *Subsections (3)(a) and (c)* allow the modification power to be exercised differently in different cases or circumstances. This could, for example, allow the Secretary of State to make different modifications in relation to generation under development and generation that is already connected to the network.
445. *Subsection (3)(d)* makes provision for the Secretary of State to make any incidental, supplementary, consequential or transitional modifications to licence conditions or documents of the kind mentioned in *subsection (1)(c)*.
446. By virtue of *subsection (4)* the modification power may not be exercised after the end of the period of 2 years beginning with the day on which *subsection (1)* comes into force. *Subsection (1)* comes into force on such day as is appointed by order of the Secretary of State (see *section 110(2)*).
447. *Subsection (5)* ensures that, where the power under *subsection (1)* to make modifications is exercised, certain general provisions of the Electricity Act 1989 which are relevant to this power are applicable. For example, the modifications can require the licence holder to comply with directions by the Secretary of State or the Authority as to specified matters.

Section 85 Power to amend licence conditions etc: transmission systems: Procedure

448. This section sets out the procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by section 84 (Power to amend licence conditions etc: transmission systems). *Subsection (1)* obliges the Secretary of State, before making modifications, to consult the holders of licences being modified, the Authority and others as appropriate. *Subsection (3)* requires the Secretary of State to publish any modifications which are made.

Section 86 Power to amend licence conditions etc: transmission systems: supplemental

449. This section makes three supplemental provisions in relation to the modification power conferred by section 84 (Power to amend licence conditions etc: transmission systems). *Subsection (1)* ensures that any modifications made to a standard licence condition under the new power would not affect the remainder of that standard licence condition.
450. *Subsection (2)* ensures that where licence modifications are made to standard licence conditions, the Authority must make the same modifications for the purpose of future licences, and also must publish those modifications. Schedule 4 amends sections 33(1) of the Utilities Act 2000 so that any standard conditions which are modified under section 84 (Power to amend licence conditions etc: transmission systems) are incorporated as standard conditions for licences of that type.
451. *Subsection (3)* is an order making power for the Secretary of State to make consequential amendments to provisions made by or under an Act (including Acts of the Scottish Parliament) as he considers appropriate. Section 105(2) provides that such orders will be subject to the affirmative procedure.

Energy Reports Summary and Background

452. This element of the Act deals with statutory obligations to report on a variety of energy related subjects. As the energy market has developed and diversified in recent years, various initiatives and legislative changes have resulted in a growing number of requirements on the Secretary of State to produce annual reports.

453. Many of these requirements remain valid; however, some have been superseded or are not aligned with ongoing developments in the context of energy and climate change policy. One example in the climate change context is the new requirement for a carbon budget reporting system which is being introduced through the Climate Change Act 2008. The Act amends the existing statutory provisions imposing energy-related reporting obligations placed on the Secretary of State.

Commentary on Sections

Section 87: Energy reports and Schedule 5: Repeals

454. Section 1 of the [Sustainable Energy Act 2003 \(c.30\)](#) (“2003 Act”) requires the Secretary of State to report annually on progress towards sustainable energy aims. The four energy goals set out in the 2003 Energy White Paper *Our Energy Future – creating a low carbon economy* are:
- to put the UK on a path to cut carbon dioxide emissions by some 60% by about 2050, with real progress by 2020;
 - to maintain the reliability of energy supplies;
 - to promote competitive markets in the UK and beyond, helping to raise the rate of sustainable economic growth and to improve productivity; and
 - to ensure that every home is adequately and affordably heated.
455. The requirements concerning publication of the report on progress towards these energy goals, including when and what it must include, are set out in section 1 of the 2003 Act. This section has since been amended, in particular by section 81 of the Energy Act 2004. The amendment made by that section requires more detailed reporting, as the Secretary of State considers appropriate, on the development or bringing into use of certain energy sources and technologies listed in that Act.
456. *Subsection (1)* of this section changes the reporting period from 24 February until 23 February each year, to each year beginning with 1 January and ending with 31 December. In consequence of that change, the section also changes the publication date so as to requires the annual report to be published between the period 1 January and 31 October following the reporting period to which it relates.
457. *Subsection (1)* also removes the requirement to include detail on specific energy sources and technologies. The effect is that the report will focus on progress toward meeting the four main energy policy goals, rather than the detail of developments in smaller more specialised, technology-specific areas of the energy sector. The Sustainable Energy Act 2003 (sections 2 and 3) and Housing Act 2004 (s217(1)) both contain provisions regarding energy efficiency in residential accommodation. *Subsection (1)* also removes the requirement to report on progress toward (but not the duty to designate or publish) the energy efficiency aims in the 2003 Act.
458. The repeals in Schedule 5 include repeals which are necessary because of the effect of section 87. Section 18 of the [Climate Change and Sustainable Energy Act 2006 \(c.19\)](#) is also repealed as the obligation is now spent.

Smart Meters

Summary and Background

459. In *Meeting the Energy Challenge: A White Paper on Energy* (May 2007) the Government indicated the importance it placed on improving the information energy customers receive about their energy use. Improved information will enable them to better manage, and take action to reduce, their energy consumption, and as a result reduce their carbon emissions. In this context the Government set out the potential for smart meters to provide, amongst other things, accurate, real time information to consumers about their energy consumption.

460. An announcement was made in the 2008 Budget setting out the Government's intention to mandate a roll out of "smart meters" to medium-sized businesses over the next five years. A further announcement was made in October 2008,, which confirmed the Government's intention to proceed with a roll out of "smart meters" to domestic customers. Sections 88 to 91 will allow for these roll-outs to be mandated. The sections would also allow for a roll-out of smart meters to smaller business in the future, if the Government decides to proceed with a roll-out for that segment..
461. The power in section 88 will allow the Secretary of State to modify electricity distribution and supply licences and gas transporter, shipper and supply licences, or documents made under licence conditions, to require the licence holder to install, or facilitate the installation of, smart meters. As is common practice in regulating these parts of the electricity and gas sectors the intention is to specify the detail of the requirements being placed on licensees and other relevant arrangements, through modified licence conditions and/or amendments to the agreements and codes entered into under the licences.
462. Provision is made for Parliamentary scrutiny. In addition to requirements for the Secretary of State to consult relevant licensees, the Gas and Electricity Markets Authority and any other appropriate persons, there is a requirement on the Secretary of State to lay the draft modifications in Parliament and allow a period of 40 days in which either House of Parliament can reject the draft conditions.
463. In addition to the licence modification power in Section 88, section 91 and Schedule 4 enable the Secretary of State to create new licensable activities in relation to providing, installing or operating smart meters or related infrastructure under the Gas and Electricity Acts by affirmative order. These licences may be used to centralise some, or all, aspects of smart metering provision if that is deemed necessary to ensure their efficient installation across Great Britain. The power may, for example, be used to ensure that a centralised communications infrastructure is put in place to support smart metering.
464. **Section 91** and Schedule 4 allow for the geographic scope of a licence to be restricted – for instance to provide for regional delivery of smart meters – if required. The order may provide for either the Secretary of State or the Authority to award the licences and Schedule 4 includes power for the Secretary of State to make regulations for a competitive tendering process for purposes of identifying to whom these licences will be awarded.
465. It is expected that the existing licensing framework and metering provisions in the Electricity and Gas Acts would be applied to the new licensable activities, for example: the prohibition on unlicensed activities in section 4 of the Electricity Act and section 5 of the Gas Act; the procedures for modification of licences in sections 11 to 15 of the Electricity Act and sections 23 to 27 of the Gas Act; and the enforcement powers in sections 25 to 28 of the Electricity Act and sections 28 to 32 of the Gas Act.

Commentary on Sections

Section 88: Power to amend licence conditions etc: smart meters

466. This section gives the Secretary of State the power to modify, for the purposes described below:
- a particular electricity distribution or supply licence (*subsection (1)(a)*)
 - a gas transporter, shipper or supply licence (*subsection (1)(c)*)
 - standard licence conditions of those types of gas and electricity licence (*subsections (1)(b) and (1)(d)*).
 - documents maintained under the licence conditions of relevant gas and electricity licences – for example, industry codes (*subsection (1)(e)*).

467. *Subsection (2)* sets out the scope of the modification power. It may only be exercised for the purpose of:
- requiring licence holders to provide or install, or facilitate the provision, installation or operation of, a meter of a particular kind; or
 - requiring licence holders to make arrangements relating to such matters.
468. *Subsection (3)* sets out an inclusive list of various types of modifications that may be made under the new power. These include the technical specifications of the meter and provisions to allow two way communications between energy suppliers/distributors and meters installed in business or domestic premises (see *paragraphs (a) and (j)*).
469. *Paragraph (l)* makes provision for the Secretary of State to set a date from which the modification(s) come into force. This would, for example, allow the Secretary of State to set a time limit for the roll-out of smart meters.
470. *Subsection (4)(a)* allows the modification power to be exercised to make different provision in relation to different classes of customer (for example domestic, small business or medium/larger businesses). *Subsection (4)(d)* makes provision for the Secretary of State to make any incidental, supplementary, consequential or transitional modifications to licence conditions or documents of the kind mentioned in *subsection (1)(e)*.
471. By virtue of *subsection (5)* the modification power may not be exercised after the end of the period of 5 years beginning with the day on which *subsection (1)* comes into force. *Subsection (1)* comes into force on the passing of the Act (see [section 99\(1\)](#)).
472. *Subsection (6)* ensures that, where the power under *subsection (1)* to make modifications is exercised, certain general provisions of the Gas and Electricity Acts which are relevant to this power are applicable – so that, for example, the modifications can include a requirement for the licence holder to comply with directions by the Secretary of State or the Gas and Electricity Markets Authority as to specified matters.
473. *Subsection (7)* states that references to a meter in any part of section 81 also include visual display units or other devices associated with or ancillary to the meter.

Section 89: Power to amend licence conditions etc: Procedure

474. This section sets out the procedure that the Secretary of State must comply with in order to exercise the modification powers conferred by section 88. *Subsection (1)* obliges the Secretary of State, before making modifications, to consult the holders of licences being modified, the Gas and Electricity Markets Authority and others as appropriate. This consultation may take place before or after the passing of the Act. *Subsections (3) and (4)* state that before making modifications the Secretary of State must lay the draft modifications before Parliament and allow a period of 40 days for either House of Parliament to reject the draft.

Section 90: Smart meters: supplemental and Schedule 5: minor and consequential amendments

475. This section makes three supplemental provisions in relation to the modification power conferred by section 88. *Subsection (1)* ensures that any modifications made to a standard licence condition under this power do not prevent any other part of the condition from being a standard condition. This means that the remainder of the standard condition will be subject to the rules relating to standard conditions under the Gas and Electricity Acts. *Subsection (2)* ensures that where licence modifications are made to standard licence conditions, the Gas and Electricity Markets Authority must make the same modifications for the purpose of future licences, and also must publish those modifications. Schedule 5 amends sections 33(1) and 81(2) of the Utilities

Act 2000 so that any standard conditions which are modified under section 88(1) are incorporated as standard conditions for licences of that type.

476. *Subsection (3)* is an order making power for the Secretary of State to make consequential amendments to provisions made by or under an Act (including Acts of the Scottish Parliament) as he considers appropriate.

Section 91 and Schedule 4: Licensing of activities relating to smart meters

477. **Part 1** of Schedule 4 inserts the following new sections into the Gas Act 1986:

- 41HA New licensable activities: smart meters
- 41HB Section 41HA: supplemental
- 41HC Competitive tendering for licences for new licensable activities

478. **Part 2** of Schedule 4 inserts the following new sections into the Electricity Act 1989:

- 56FA New licensable activities: smart meters
- 56FB Section 41HA: supplemental
- 56FC Competitive tendering for licences for new licensable activities

Part 1: Gas

Section 41HA: New licensable activities: smart meters

479. This section gives the Secretary of State an order-making power to both create new licensable activities under section 41C of the Gas Act 1986 in relation to smart metering and to order that such new licensable activities shall cease to be licensable.
480. *Subsection (2)* provides that once activities become licensable, it will be an offence under section 5(1) of the Gas Act to undertake them without a licence.
481. *Subsection (3)* sets out the scope of the licensing power and that it may only be used to make licensable some or all of the activities connected with the provision, installation or operation of smart meters or related infrastructure or services. This could include, for example, the communications infrastructure for smart meters. *Subsection (4)* provides for the definition of “smart meters” to be set out in the order.
482. *Subsection (5)* makes provision for the order to include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to add any new licensable activities to the current list of licensable activities in sections 5(1) and 7 of the Gas Act and to make other amendments necessary to ensure that the new licences fit within the existing statutory framework. Such changes could include making a provision similar to section 81(1) of the Utilities Act 2000 to specify how any new standard conditions are to come into effect and/or be suspended; and amending section 81(2) of the Utilities Act so that any modified standard conditions are incorporated as standard conditions for licences of that type. It is envisaged that the existing licensing framework and metering provisions in the Gas Act will be applied to the new licensable activities including, for example, the procedures for modification of licences in sections 23 to 27 of the Gas Act and the enforcement powers in sections 28 to 32 of the Gas Act.
483. *Subsection (5)(c)* makes provision for the order to specify the standard conditions for any new licensable activities and to modify any existing standard conditions of licences.
484. *Subsection (6)* sets out a further non-inclusive list of the type of provisions which an order creating new licensable activities could contain. This includes provision restricting the geographic scope of licences which would, for example, facilitate national or regional licensing of smart metering activities (*paragraphs (a) and (b)*). The order could also confer functions of the Secretary of State or the Authority which would,

for example, enable the conferral of the general licensing powers in section 7B(4) to (11) of the Gas Act on the Secretary of State so that he can determine the general licence conditions for any new licences created under these powers (*paragraph (e)*).

485. *Subsection (7)* makes provision for the Secretary of State to specify how long an order will remain in force which could limit the period during which any smart metering activities are licensable.

Section 41HB Section 41HA: supplemental

486. This section sets out the procedure with which the Secretary of State must comply when making an order under section 41HA(1). *Subsection (1)* obliges the Secretary of State to consult the Authority and others as appropriate before making an order. By virtue of *subsection (2)*, the power to make an order may not be exercised after the end of the period of 5 years beginning with the day on which section 41HA(1) comes into force. Section 41HA(1) comes into force on the passing of the Act (see [Section 110\(1\)](#)).
487. *Subsection (3)* provides that the affirmative procedure will apply to the order and that it will not come into force unless approved by resolution of each House of Parliament (see also [Schedule 5](#) amending section 64(2) of the Gas Act).
488. *Subsection (4)* gives the Secretary of State certain supplemental powers contained in sections 47(1) to (3) of the Gas Act when making any order under section 41HA(1). These include a power to make provision for the determination of any questions of fact or law which may arise in giving effect to the order; prescribing time-limits within which things are to be done; and providing for matters under the order to be determined by specified persons and in accordance with specified procedures.

Section 41HC: Competitive tendering for licences for new licensable activities

489. This section gives the Secretary of State power to make regulations providing for the award of licences for new licensable activities connected with the provision of smart meters, by the Secretary of State or the Authority following a competitive tender procedure.
490. *Subsection (3)* sets out a non-inclusive list of the type of provisions which the regulations may include. The regulations may provide for the licences to be awarded by either the Secretary of State or the Authority (*paragraph (a)*); and may prescribe the necessary procedures for the tender process, including publication of an invitation to tender and the conditions and any restrictions governing the making of applications (*paragraphs (b) to (f)*).
491. The regulations may also make provision concerning how the applications for licences are to be considered and determined. In particular, the regulations may authorise or require the Secretary of State or the Authority to have regard to an applicant's suitability in relation to both gas and electricity activities when awarding a licence for new activities under the Gas Act (*paragraphs (g) and (h)*). The regulations may also confer functions on either the Secretary of State or the Authority in relation to the conduct of the tender (*paragraph (i)*).
492. *Subsection (4)* gives the Secretary of State power to make provision for the Secretary of State or the Authority to recover the costs of running the tender and to specify the consequences of any failure to make payment. This could, for example, give the Secretary of State power to require applicants to make payments to cover the costs of running the tender and ending their participation in the tender, and if necessary ending the tender exercise, in the event of any failure to comply. *Subsection (6)* states that any sums received by the Secretary of State or the Authority will be paid into the Consolidated Fund.
493. The regulations would be subject to the negative resolution procedure.

Part 2: Electricity

Section 56FA New licensable activities: smart meters

494. **Section 91** gives the Secretary of State an order-making power to both create new licensable activities under section 56A of the Electricity Act in relation to smart metering and to order that such new licensable activities shall cease to be licensable.
495. *Subsection (2)* provides that once activities become licensable, it will be an offence under section 4(1) of the Electricity Act to undertake them without a licence.
496. *Subsection (3)* sets out the scope of the licensing power and it may only be used to make licensable some or all of the activities connected with the provision, installation or operation of smart meters or related infrastructure or services. This could include, for example, the communications infrastructure for smart meters. *Subsection (4)* provides for the definition of “smart meters” to be set out in the order.
497. *Subsection (5)* makes provision for the order to include any necessary consequential, transitional, incidental or supplementary changes to primary legislation. This will enable the Secretary of State to add any new licensable activities to the current list of licensable activities in sections 4(1) and 6(1) of the Electricity Act and to make other amendments necessary to ensure that the new licences fit within the existing statutory framework. Such changes could include making a provision similar to section 33(2) of the Utilities Act 2000 to specify how any new standard conditions are to come into effect and/or be suspended; and amending section 33(1) of the Utilities Act so that any modified standard conditions are incorporated as standard conditions for licences of that type.
498. It is envisaged that the existing licensing framework and metering provisions in the Electricity Act will be applied to the new licensable activities including, for example, the procedures for modification of licences in sections 11 to 15 of the Electricity Act and the enforcement powers in sections 25 to 28 of the Electricity Act.
499. *Subsection (5)(c)* makes provision for the order to specify the standard conditions for any new licensable activities and to modify any existing standard conditions of licences.
500. *Subsection (6)* sets out a further non-inclusive list of the type of provisions which an order creating new licensable activities could contain. This includes provision restricting the geographic scope of licences which would, for example, facilitate national or regional licensing of smart metering activities (*paragraphs (a) and (b)*). The order could also confer functions of the Secretary of State or the Authority which would, for example, enable the conferral of the general licensing powers in section 7 of the Electricity Act on the Secretary of State so that he can determine the general licence conditions for any new licences created under these powers.
501. *Subsection (7)* makes provision for the Secretary of State to specify how long an order will remain in force which could limit the period during which any smart metering activities are licensable.

Section 56FB: section 56FA:supplemental

502. This section sets out the procedure with which the Secretary of State must comply when making an order under section 56FA(1).
503. *Subsection (1)* obliges the Secretary of State to consult the Authority and others as appropriate before making an order. By virtue of *subsection (2)*, the power to make an order may not be exercised after the end of the period of 5 years beginning with the day on which section 56FA(1) comes into force. Section 56FA(1) comes into force on the passing of the Act (see [section 110\(1\)](#)).
504. *Subsection (3)* provides that the affirmative procedure will apply to the order and it will not come into force unless approved by resolution of each House of Parliament (see also [Schedule 5](#) amending section 106(2)(b) of the Electricity Act).
505. *Subsection (4)* gives the Secretary of State certain supplemental powers contained in section 60 of the Electricity Act when making any order under section 56FA(1). These

include power to make provision for the determination of any questions of fact or law which may arise in giving effect to the order; prescribing time-limits within which things are to be done; and providing for matters under the order to be determined by specified persons and in accordance with specified procedures.

Section 56FC: Competitive tendering for licences for new licensable activities

506. This section gives the Secretary of State power to make regulations providing for the award of licences for new licensable activities by the Secretary of State or the Authority following a competitive tender procedure.
507. *Subsection (3)* sets out a non-inclusive list of the type of provisions which the regulation may include. The regulations may provide for the licences to be awarded by either the Secretary of State or the Authority (*paragraph (a)*); and may prescribe the necessary procedures for the tender process including publication of an invitation to tender and the conditions and any restrictions governing the making of applications (*paragraphs (b) to (f)*).
508. The regulations may also make provision concerning how the applications for licences are to be considered and determined. In particular, the regulations may authorise or require the Secretary of State or the Authority to have regard to an applicant's suitability in relation to both gas and electricity activities when awarding a licence for new activities under the Gas Act (*paragraphs (g) and (h)*). The regulations may also confer functions on either the Secretary of State or the Authority in relation to the conduct of the tender (*paragraph (i)*).
509. *Subsection (4)* gives the Secretary of State power to make provision for the Secretary of State or the Authority to recover the costs of running the tender and to specify the consequences of any failure to make payment. This could, for example, give the Secretary of State power to require applicants to make payments to cover the costs of running the tender and ending their participation in the tender, and if necessary ending the tender exercise, in the event of any failure to comply. *Subsection (6)* states that any sums received by the Secretary of State or the Authority will be paid into the Consolidated Fund.
510. The regulations would be subject to the negative resolution procedure.

Gas and Electricity Meters

Summary and Background

511. This element of the Act transfers certain statutory functions relating to gas and electricity meters from the Gas and Electricity Markets Authority (the Authority) to the Secretary of State. These are legal metrology functions: they relate to the legal mechanisms for ensuring the accuracy of meters. The intention is that these functions will in future be performed by the National Weights and Measures Laboratory, an executive agency of the Department for Innovation, Universities and Skills.
512. Administrative responsibility for the technical metering functions and staff was transferred by a Memorandum of Understanding between the Authority and the NWML in 2006. The effect of the sections in this part of the Act is to complete the process of transferring these functions, by putting the existing administrative arrangements on a statutory footing.
513. The Authority regulates the gas and electricity markets in Great Britain. It is currently responsible for, amongst other things, gas and electricity meter approvals, certification (electricity) and stamping (gas) of new meters, the appointment of meter examiners and disputed meter accuracy testing.
514. The National Weights and Measures Laboratory (NWML) has a remit to ensure UK measurement is accurate, fair and legal. Acting on behalf of the Secretary of State, NWML currently has similar responsibilities to those which the Authority has in

respect of gas and electricity meters for other measuring instruments, such as weighing machines, fuel pumps and water meters.

515. The Authority recovers the costs of performing its metrological functions through a licensing fee charged to network operators. The costs of performing these functions accounts for only a small part (under 2%) of the costs recovered in this way. It is proposed that when the Act transfers these functions to the Secretary of State, the costs incurred by the NWML in performing these functions should continue to be recovered as part of the licensing fee paid by network operators. An amendment to the relevant network operators' licence conditions is therefore required in order to allow the Authority to pass the recovered funds to the NWML.
516. On completion of the transfer, the NWML will have responsibility for the standards and accuracy of gas and electricity meters. However, the Authority will retain its current responsibilities for smart and pre-payment metering policy will remain with the Authority, since they relate to the regulation and strategy for where, when and how these types of meter are used. The NWML will cover whether these types of meter measure accurately.

Commentary on Sections

Section 92: Gas meters

517. Section 17 of the [Gas Act 1986 \(c. 44\)](#) sets out existing requirements on the use of gas meters and specifies that no meter shall be used for ascertaining the quantity of gas supplied unless it has been stamped by an appointed meter examiner. It further sets out the requirements and responsibilities of those meter examiners when examining and stamping meters, and provides for their remuneration. Section 17 also allows for regulations to be made by the Authority which relate to, amongst other things:
- the prescribed standards meters must satisfy to be stamped, which include the performance requirements and routes to demonstrating conformity;
 - how and why meter approvals are revoked and the process that has to be followed if, for example, a design defect is found when meters are used in service; and
 - what happens when meter accuracy is disputed, including the circumstances when meters can be re-examined, the standards the meter should meet and the actions of the meter examiner following the re-examination.
518. *Subsection (1)* transfers to the Secretary of State the Authority's functions under section 17 of the [Gas Act 1986 \(c. 44\)](#) and certain regulations relating to gas meters made under that section or under section 2(2) of the European Communities Act 1972 ("gas meter regulations", as defined in *subsection (5)*). *Subsection (2)* ensures that references to the Authority, in section 17 of the 1986 Act or in gas meter regulations, will be read as references to the Secretary of State.
519. *Subsections (3) and (4)* will ensure that existing regulations made under section 17 of the 1986 Act, and other regulatory actions of the Authority in relation to meters, have effect as if made or done by the Secretary of State.
520. The combination of the changes set out in *subsections (1) to (4)* transfers the responsibility for the functions (including the power to make regulations) under section 17 to the Secretary of State. This formally transfers these responsibilities from the Authority to the NWML.

Section 93: Section 92: consequential amendments

521. This section makes amendments to section 17 of the [Gas Act 1986 \(c.44\)](#) which are consequential on the transfer of functions from the Authority to the Secretary of State and relate to meter examiners.

522. Meter examiners are currently appointed by the Authority (in future, by the Secretary of State) under section 17. Examiners carry out much of the technical work done under that section and gas meter regulations. At present, most meter examiners are not civil servants.
523. By inserting a new *subsection (7A)* into section 17, *subsection (4)* makes provision for the Secretary of State to contribute towards the remuneration and pensions of non-civil service meter examiners and the maintenance of the equipment they use to perform their statutory functions. The new subsection provides clarity about payments to non-civil servant meter examiners (and, in some cases, their employers) in respect of the carrying out of statutory functions.

Section 94 and Schedule 5: Power to amend licence conditions: gas

524. In transferring these legal metrology functions, it is necessary to ensure that the NWML can recover the costs of carrying out the transferred functions. To make this possible, licence payment conditions need to be modified to allow the Authority to recover funds from the licence fee and pass them to the NWML.
525. This section therefore gives the Secretary of State the power to modify gas transporter licence conditions under sections 7 and 8 of the [Gas Act 1986 \(c.44\)](#). Section 7 covers the requirements for licensing gas transporters, whilst section 8 covers standard conditions of such licences.
526. The effect of the section is that, following licence modifications made by the Secretary of State, the Authority will be able to recover from gas transporters costs incurred by the NWML in respect of functions in relation to gas meters, and pay those costs into the Consolidated Fund.
527. There are a number of checks and balances built into the section by virtue of *subsections (4) to (9)*. They require the Secretary of State to consult licence holders, the Authority and any other persons as appropriate before making licence modifications. The Secretary of State must also publish the modifications, and ensure that the modifications made apply to all future licences.
528. *Subsection (9)* has the effect that modifications can only be made to licence conditions by the Secretary of State for six months after *subsection (1)* comes into force. The deadline is to provide certainty to the gas transporters that the power will only be used once for the purpose of allowing the Authority to recover funds and pass them onto NWML. Given the technical nature, it is not considered appropriate to detail the licence modification on the face of the Act.
529. *Paragraph 14* of Schedule 5 makes amendments to the [Utilities Act 2000 \(c.27\)](#) which are consequential on the transfer of functions from the Authority to the Secretary of State.

Section 95: Electricity meters

530. Schedule 7 to the [Electricity Act 1989 \(c.29\)](#) describes, amongst other things, how electricity meters must be examined and certified. The Schedule further sets out requirements in relation to electricity meter examiners. The Schedule allows the Authority to make regulations which relate to, for example:
- the requirements new meter designs must meet to be approved, which include the performance and routes to demonstrating conformity;
 - the requirements on manufacturers or repairers when submitting meters for certification which include meter performance, testing equipment and reporting; and

- audit arrangements for manufacturers and repairers when seeking authorisation to self certify meters.
531. *Subsection (1)* transfers to the Secretary of State the Authority’s functions under Schedule 7 (other than *paragraph 12*) to the [Electricity Act 1989 \(c.29\)](#) and certain regulations relating to electricity meters made under that Schedule or under section 2(2) of the European Communities Act 1972 (“electricity meter regulations”, as defined in *subsection (5)*). *Subsection (2)* ensures that references to the Authority in Schedule 7 to the Electricity Act will be read as references to the Secretary of State. The omission of *paragraph 12* to Schedule 7 from the transfer means that the Authority will continue to have responsibility for policy decisions about how and when pre-payment meters should be used.
532. *Subsections (3) and (4)* will ensure that existing regulations made at any time under Schedule 7 to the Electricity Act, and other regulatory actions of the Authority in relation to meters, have effect as if made or done by the Secretary of State.

Section 96: Section 95: consequential amendments

533. This section makes amendments to Schedule 7 to the [Electricity Act 1989 \(c.29\)](#) which are consequential on the transfer of functions from the Authority to the Secretary of State.
534. Meter examiners are appointed by the Authority (in future, by the Secretary of State) under Schedule 7. Examiners carry out much of the technical work done under that Schedule and electricity meter regulations. At present, most meter examiners are not civil servants.
535. By inserting a new *paragraph 4(2A)* into Schedule 7, *subsection (4)(b)* makes provision for the Secretary of State to contribute towards the remuneration and pensions of non-civil service meter examiners and the maintenance of the equipment they use to perform their statutory functions. The new paragraph is to provide clarity about payments to non-civil servant meter examiners (and, in some cases, their employers) in respect of the carrying out of statutory functions.
536. *Paragraph 12* of Schedule 7 allows the Authority to make regulations which permit sums owed to be recovered from customers using a pre-payment meter. This power will remain with the Authority. As such, policy decisions on how and when pre-payment meters should be used will continue to rest with the Authority, although the NWML will be responsible for the accuracy of pre-payment meters.

Section 97 and Schedule 5 : Power to amend licence conditions: electricity

537. In transferring these legal metrology functions, it is necessary to ensure that the NWML can recover the costs of carrying out these transferred functions. To make this possible, licence payment conditions therefore need to be modified to allow the Authority to recover funds from the licence fee and pass them through the Consolidated Fund to the NWML.
538. This section therefore allows the Secretary of State to modify electricity transmission and distribution licence conditions under section 6(1)(b) or (c) and section 8A of the [Electricity Act 1989 \(c.29\)](#). Section 6(1)(b) covers the requirements for licensing electricity transmitters and section 6(1)(c) covers the requirements for licensing electricity distributors, whilst section 8A covers standard conditions of such licences.
539. It has the effect that following licence modifications, the Authority will be able to recover from electricity transmission and distribution operators costs incurred by the NWML in respect of functions in relation to electricity meters, and pay those costs into the Consolidated Fund.

540. There are a number of checks and balances built into the section by virtue of *subsections (4) to (9)*. They require the Secretary of State to consult licence holders, the Authority and any other persons as appropriate before making licence modifications, which must be published, and ensure those modifications apply to all future licences.
541. *Subsection (9)* has the effect that modifications can only be made to licence conditions by the Secretary of State for 6 months after *subsection (1)* comes into force. The deadline is to provide certainty to the gas transporters that the power will only be used once for the purpose of allowing the Authority to recover funds and pass them onto NWML. Given the technical nature of the licence modification, it is not considered appropriate to set it out on the face of the Act.
542. *Paragraph 13* of Schedule 5 makes amendments to the [Utilities Act 2000 \(c.27\)](#) which are consequential on the transfer of functions from the Authority to the Secretary of State.

Connection Offer Expenses

Summary and Background

543. New developments such as retail parks or housing projects require connections to the local electricity distribution network. When assessing the capital costs of such developments, developers need to know how much such a connection would cost and can request a network connection offer from the relevant Distribution Network Operator. The Distribution Network Operator is required, under the Electricity Act 1989, to provide a network connection offer following such a request. When providing the connection offer, the Distribution Network Operator will incur costs, for example, in determining the most appropriate point of connection to its network, designing the connection to the network and assessing what upstream changes need to be made to provide the load requested.
544. Until 2008, the practice was that Distribution Network Operators charged persons making connection requests up front for the costs incurred when providing network connection offers³. However, following a complaint lodged with the Authority about this practice, legal advice confirmed that the Electricity Act 1989 only permitted Distribution Network Operators to recover these costs if an actual connection to the network was made. Since this issue came to light, the Authority has required Distribution Network Operators to change their charging methodologies to remove all elements of up front charging and bring them in line with the statutory arrangements. However, this means that because there are instances where connection offers are made but no connection is established, the Distribution Network Operators are unable to recoup all of their costs. Examples of such scenarios are, where developers make speculative requests about developments that do not then go forward, or where a third party connections provider requests an offer on a speculative basis. It is envisaged that without the ability to charge up front, that Distribution Network Operators may pass their assessment and design costs onto all users of the network, rather than those who cause these costs to be incurred.
545. This section will amend the Electricity Act 1989 to allow for up front charging in certain circumstances to allow Distribution Network Operators to recoup the costs of providing network connection offers.

Commentary on Sections

Section 98: Costs connected with making an offer of connection

546. Section 16 of the Electricity Act 1989 states that a Distribution Network Operator is under a duty to make connections to the distribution system in specified circumstances. Section 16A of the Electricity Act 1989 states that when a third party requests a

³ The practice of levying upfront charges was reflected in each DNOs' Connection Charging Methodology that are approved by the Authority.

connection from an electricity distributor, the distributor is required to provide a network connection offer. Section 19 of the Electricity Act 1989 enables the electricity distributor to recover costs reasonably incurred in providing a network connection. The provision does not, however, entitle Distribution Network Operators to charge for work carried out, and expenses incurred, for network connection offers where a connection is not subsequently made.

547. *Subsection (2)* of section 98 addresses this problem by inserting new subsections (4A) to (4C) into section 16A of the Electricity Act 1989.
548. *Subsection (4A) of the Electricity Act 1989* provides the Secretary of State with a power to make regulations entitling a Distribution Network Operator to request (to such extent as is reasonable in the circumstances) payment of expenses incurred when making network connection offers under section 16A(5) of the Electricity Act 1989. The power may only be exercised after consultation with the Authority.
549. *Subsection (4B)* states that the kind of expenses recoverable will be specified in regulations and, consistent with section 19(1) of the Electricity Act 1989, must have been reasonably incurred. The combined effect of subsections (4A) and (4B) is that a Distribution Network Operator may only request payment of his expenses if it is reasonable to do so.
550. *Subsection (4C)* provides scope for the regulations to specify circumstances under which an electricity distributor is not entitled to require payment and how expenses reasonably incurred are to be calculated.

Electricity Safety

Summary and Background

551. This element of the Act relates to electricity safety standards, which are aimed at protecting the general public and consumers from danger. The purpose is to allow for stronger sanctions where there is a breach of electricity safety standards and also to complete the implementation of a recommendation made by Philip Hampton in his March 2005 report, *Reducing Administrative Burdens: Effective Inspection and Enforcement*.
552. In October 2006, following the Hampton report, there was an administrative transfer of the responsibility for electricity safety standards, from the Secretary of State to the Health and Safety Executive (HSE) which provided for the HSE to exercise functions on the Secretary of State's behalf. Electricity safety standards are set out in the [Electricity Safety, Quality and Continuity Regulations 2002 \(S.I. 2002/2665\)](#) (as amended) (made under the [Electricity Act 1989 \(c.29\)](#)), and include such things as the correct minimum height of overhead lines, appropriate controls on the use of underground cables, and earthing of metalwork.
553. This element of the Act formalises the administrative transfer and creates a consistent approach to the enforcement of safety regulation by giving overall responsibility to one regulatory body. This is in line with the wider Hampton recommendation for HSE to become the overall regulator for safety matters, to reduce the administrative burden of more than one regulator having similar functions.
554. The changes also allow HSE inspectors to use the sanctions available to them under the Health and Safety at Work etc. Act 1974, when enforcing electricity safety standards. These sanctions are considered by the government to better reflect the seriousness of a breach of electricity safety standards and are the same as sanctions available for a breach of other safety legislation enforced by the HSE.
555. The Electricity Safety, Quality and Continuity Regulations 2002 deal with issues of both electricity safety and security of supply. This element of the Act deals only with electricity safety. Responsibility for regulating security of supply will remain with the Secretary of State.

Commentary on Sections

Section 99: Electricity Safety

556. Section 29 of the Electricity Act 1989 allows the Secretary of State to make regulations relating to electricity safety and supply. The regulations relating to electricity safety and security of electricity supply that are made under section 29, are the Electricity Safety, Quality and Continuity Regulations 2002 (as amended). Part 1 of the Health and Safety at Work etc. Act 1974 sets out provisions for the purpose of enabling the Health and Safety Executive (HSE) to secure the health, safety and welfare of persons.
557. This section makes section 29 of the [Electricity Act 1989 \(c.29\)](#), and regulations made under it, existing statutory provisions under Part 1 of the [Health and Safety at Work etc. Act 1974 \(c.37\)](#), so far as they relate to safety. This has the effect that section 29 and any associated Regulations will be considered as always having existed as statutory provisions of the Health and Safety at Work etc. Act 1974.
558. The effect of this section is to pass responsibility for electricity safety standards, including the inspection and enforcement of them, from the Secretary of State to the HSE. This therefore gives the HSE the power to amend those electricity safety standards should it see fit.
559. By making section 29 an existing statutory provision, HSE inspectors will be able to use existing statutory powers, available under the [Health and Safety at Work etc. Act 1974 \(c. 37\)](#), to prosecute for a breach of electricity safety standards. This provides an alternative, stronger sanction than any of those available under the Electricity Safety, Quality and Continuity Regulations 2002.
560. The sanctions available under the regulations are, on summary conviction, a fine not exceeding level 5 on the standard scale for each breach (currently £5,000 in England, Wales and Northern Ireland and £10,000 in Scotland). Once section 29 is made an existing statutory provision, the maximum sanction would be a £20,000 fine, on summary conviction, or an unlimited fine, on conviction on indictment. This is in line with existing health and safety penalties.
561. The Health and Safety at Work etc. Act 1974 also allows for prosecution for non-compliance where an Improvement Notice under section 21 or a Prohibition Notice under section 22 has been issued. Where there has been non-compliance with an enforcement notice, inspectors could prosecute on indictment with an unlimited fine or 2 years imprisonment, or both.
562. Section 15 of the Health and Safety at Work etc. Act 1974 gives the Secretary of State the power to make health and safety regulations. *Subsection (2)* of this section sets out that regulations made under section 15 of the Health and Safety at Work etc. Act 1974 can remove or amend section 29 of the Electricity Act 1989, or any regulations made under it, or make new regulations that could have been made under section 29.

Renewable Heat Incentives

Summary and Background

563. Renewable heat is heat generated from renewable sources such as the sun, the heat in the ground and in the air, and biomass fuels such as wood from sustainable sources or biogas produced from biogenic waste. At present such heat meets only 0.6% of UK heat demand. The Renewable Energy Strategy (“RES”) consultation document published in June 2008 suggested that this may need to rise to around 14% in 2020 if the UK is to meet the projected overall renewable energy target of 15% for UK. Historically in the UK there has been little impetus for a renewable heat sector to emerge, due to the availability of large reserves of indigenous oil, coal and gas. The analysis which underpinned the RES consultation showed that without financial support very little renewable heat can be expected to come on line before 2020.

564. Renewable electricity generation has long been supported by existing financial support instruments in the UK, such as the Renewables Obligation. However, there have been no equivalent mechanisms to support renewable heat. This section of the Act gives the Secretary of State power to introduce a financial incentive mechanism for renewable heat – the Renewable Heat Incentive (“RHI”).
565. The purpose of the RHI is to stimulate a market for renewable heat by making support payments to the owners of renewable heat generation systems, proportionate to the amount of measured heat output delivered. It would essentially be a ‘feed-in-tariff’, though this is a shorthand way of describing it. In the UK heat is usually produced for immediate local use, and as there is no national heat network, it is not generally ‘fed in’ to a network and certainly not a nationwide one. The RHI will be funded via a levy on designated suppliers of fossil fuels supplied for the purpose of generating heat.
566. The RHI would be the only mechanism of its kind across Europe. A delivery framework and administrative and financial systems will need to be established to enable the RHI to be deployed. The enabling powers are broad enough to allow the detail of the scheme to be developed fully at a later stage following consultation. The provisions also allow flexibility to determine payment processes, levels of payments and to further identify who will be eligible to receive RHI payments.

Commentary on Sections

Section 100 Renewable Heat Incentives

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

*These notes refer to the Energy Act 2008 (c.32)
which received Royal Assent on 26 November 2008*

574. *Subsection (2)(b)* provides that the regulations can make provision about the calculation of the RHI payments described in *subsection 2(a)*. This is a broad and flexible provision allowing the Secretary of State to take account of different circumstances in setting the level of payments to various parties.
575. *Subsection (2)(c)* provides that the regulations can make provision about the circumstances in which payments might be recovered. For example, this would enable the Secretary of State or the Authority to make provision to recover funds that may have been paid out by mistake. .
576. *Subsection (2)(d)* provides that the regulations may make provision requiring that specified information from designated fossil fuel suppliers be provided to the Secretary of State or the Authority.
577. *Subsection (2)(e)* provides that the regulations can require designated fossil fuel suppliers to pay a levy to the Secretary of State or the Authority.
578. *Subsection (2)(f)* provides that the Secretary of State may make regulations to calculate the level of the levy.
579. *Subsection (2)(g)* provides that the regulations can allow payments to be made to fossil fuel suppliers in specified circumstances. For example, this could allow the Secretary of State or the Authority to redistribute funds collected via levies to fossil fuel suppliers, or to return funds to them.
580. *Subsection (2)(h)* provides that the regulations can make provisions about the enforcement of obligations under the RHI. These may include a power allowing the Secretary of State or the Authority to impose financial penalties, which could be used, for example, to ensure that levy payments are made in accordance with the regulations.
581. *Subsection (2)(i)* provides that the regulations may confer functions on the Secretary of State or the Authority (or both) relating to the establishment, administration or financing of the RHI scheme.
582. *Subsection (3)* sets out the definitions of specific terms referred to in this section of the Act and which are central to the RHI. In particular, the definitions provide as follows:
- they specify that the administrative Authority for the RHI, will be the Gas and Electricity Markets Authority;
 - they explain what is meant by the terms: biogas, biofuel, and biomethane. Subsection (3) also provides a definition of one of the underlying constituent materials; biomass. ;
 - they provide a definition of “designated fossil fuel supplier”. These are the suppliers who, under the RHI may be required, amongst other things, to make payments to owners of plant used to generate renewable heat and pay a levy. The definition provides that they are a specified class of fossil fuel suppliers (as provided by regulations) and, in any other case, (i.e. if not provided by regulations) all fossil fuel suppliers.
 - they define “fossil fuel” by means of a list of fuels, including, for example, coal and petroleum products
 - they define “fossil fuel supplier” as a person who supplies fossil fuel to consumers for the purpose of generating heat. This will therefore exclude electricity suppliers or suppliers of renewable fuels. It will also exclude those who are supplying fossil fuels for purposes other than generating heat.
 - they define the ‘owner’ of plant (see above). As mentioned above, in some cases third parties, for example large energy companies. may wish to finance the deployment of such heat plant in customers’ properties;

- “plant” is defined as including any equipment, apparatus or appliance.
 - the definition of “renewable generation of heat” provides that renewable heat is heat generated by means of a source of energy or technology listed at subsection (4).
603. *Subsection (4)* sets out the sources of energy and technologies referred to above in the definition of renewable generation of heat. These are: biomass, biofuels, fuel cells, water (including waves and tides), solar power, geothermal sources, heat from air, water or the ground and combined heat and power systems – but only if the system’s energy source is from a renewable energy source as defined by section 32M of the [Electricity Act 1989 \(c.29\)](#) (this has the effect of excluding combined heat and power systems which are powered by fossil fuels). None of the sources of energy or technology are limited by capacity, meaning that all scales of plant which generate renewable heat from such a source or technology may be eligible to receive a RHI payment.
604. *Subsection (5)(a)* allows for the list of energy sources as defined in *subsection (4)* to be modified by regulations. The Government’s intention is to modify the list as technological developments bring forward new technologies capable of making a contribution to the renewable heat sector. In this Act, by virtue of section 106, the power to modify includes the concepts of amending, adding to, revoking or repealing.
605. *Subsection (5)(b)* allows for the definitions of biogas and biomass as listed in *subsection 3* to be modified by regulations.
606. *Subsection (6)* allows for regulations to specify that particular activities do or do not constitute the generation of heat for the purposes of defining the generation of heat from biofuels in *subsection (2)(a)(iii)* and the definition of “fossil fuel heat supplier” generally.
607. *Subsection (7)* requires the Secretary of State to secure the agreement of Scottish Ministers before making regulations in relation to Scotland which are within the legislative competence of the Scottish Parliament. It also requires the Secretary of State to consult Scottish Ministers on all other aspects of any regulations which apply to Scotland before they can be made.
607. Regulations made under the RHI power are subject to affirmative resolution by virtue of section 105 of the Act.

Nuclear Information

Summary and Background

583. This element of the Act and [paragraph 21](#) of Schedule 5 propose minor legislative changes to ensure that the civil nuclear security regulator, the Office for Civil Nuclear Security (OCNS), is able to carry out its functions effectively. The proposed changes update the legislation to reflect recent changes in the nuclear sector. Those recent changes are:
- The use of subcontracting following restructuring of the nuclear industry, made possible by the Energy Act 2004; and,
 - the administrative transfer in April 2007 of the OCNS to the Health and Safety Executive to sit alongside the civil nuclear safety regulator, the Nuclear Installations Inspectorate (NII).
584. The amendments in this element of the Act will ensure there are sufficiently serious sanctions available for those attempting to steal sensitive nuclear information. Minor and consequential amendments also re-establish the OCNS’s ability to gain access to Civil Nuclear Police Authority premises following its transfer from the Department for Business, Enterprise & Regulatory Reform to the Health and Safety Executive.

Commentary on Sections

Section 101: Security of sensitive nuclear information

585. This section relates to the securing of sensitive nuclear information pertaining to uranium enrichment. Previously, such information could only be kept on licensed nuclear sites which also held a permit to undertake the enrichment of uranium. Restructuring of the nuclear industry following the Energy Act 2004 means that sensitive nuclear information pertaining to uranium enrichment may now be taken, and stored, away from those licensed sites (for example, at research facilities).
586. To ensure the security of that sensitive nuclear information, there is already appropriate legislation in place which applies to anyone lawfully holding such information, and which prohibits disclosure of it by that person. However, the sanctions available against persons stealing or attempting to steal such information from premises which are not licensed to undertake uranium enrichment, are only those available for the offences of burglary or theft.
587. The Government does not feel these sanctions are strong enough. This is because theft and onward dissemination to others of information pertaining to uranium enrichment has implications for national security.
588. The overall effect of the section is to allow the offences and stronger sanctions that exist under the Official Secrets Acts to be used to prosecute persons stealing or attempting to steal sensitive nuclear information from designated premises. The section achieves this through a number of steps that are set out below.
589. The [Anti-Terrorism, Crime and Security Act 2001 \(c.24\)](#) makes provisions about terrorism and security. This section adds a new section, 80A, to the 2001 Act.

New section 80A Extension of the Official Secrets Acts to certain places

590. *Subsection (1)* of this new section provides that certain premises holding sensitive nuclear information, should be deemed as belonging to, or used for the purposes of, the Crown. This will allow the Secretary of State to make an order designating those premises holding uranium enrichment technology as “prohibited places” by virtue of section 3(c) of the Official Secrets Act 1911 (c.28). *Subsection (1)* is a necessary part of the section because only premises belonging to, or used for the purposes of, the Crown may be designated as “prohibited places” under section 3(c) of the Official Secrets Act 1911.
591. The overall effect of designating these premises as prohibited places is to extend the Official Secrets Acts’ offences and sanctions to persons gaining entry, or attempting to gain entry, to those premises.
592. The penalty for breach of the [Official Secrets Act 1911 \(c.28\)](#), by virtue of section 8(1) of the [Official Secrets Act 1920 \(c.75\)](#), is a custodial sentence of not less than 3 years and not more than 14 years. Section 1(2) of the Official Secrets Act 1911 sets out that in prosecuting persons under the Act, it is not necessary to prove that a person broke into that “prohibited place” for a purpose which would adversely affect the security interests of the State. Once orders are made by the Secretary of State designating certain premises as prohibited places, the protection afforded by section 1(2) will apply. This reflects the potential impact on national security.

Paragraph 21 of Schedule 5: Energy Act 2004 (c.20)

593. The [Energy Act 2004 \(c.20\)](#) established the Civil Nuclear Constabulary to protect civil nuclear sites and nuclear materials. The Civil Nuclear Police Authority was established at the same time to ensure the Civil Nuclear Constabulary carries out its policing functions effectively and efficiently.
594. *Paragraph 2* of Schedule 13 to the [Energy Act 2004 \(c.20\)](#) sets out the directions which the Secretary of State may give to the Civil Nuclear Police Authority. These

include making sure the Civil Nuclear Constabulary completes tasks as it is required, and allowing authorised persons access to Civil Nuclear Police Authority premises. *Paragraph 2(1)(h)* of that Schedule provides that “officers of the Secretary of State’s department” are authorised to access Civil Nuclear Police Authority premises for the purposes of enabling them to monitor and inspect their activities.

595. Until the Office for Civil Nuclear Security was transferred to the Health and Safety Executive in April 2007, it was a division of the then Department of Trade and Industry and as such, its inspectors were “officers of the Secretary of State’s department”. This meant they had a statutory right to access Civil Nuclear Police Authority premises. This right of access is necessary to allow them to ensure the security of all licensed civil nuclear sites and sensitive nuclear information wherever it may be, including on Civil Nuclear Police Authority premises. However, when the regulator transferred to the Health and Safety Executive in April 2007, they ceased to be “officers of the Secretary of State’s department”. As a result, they no longer have an automatic right of access to Civil Nuclear Police Authority premises.
596. To rectify this, *paragraph 21* of Schedule 5 substitutes “persons authorised by the Secretary of State” for “officers of the Secretary of State’s department”. The effect of the paragraph is that the civil nuclear security regulator can once again access Civil Nuclear Police Authority premises, since the Secretary of State will issue a letter specifically confirming that officers of the OCNS are authorised persons.

Application of General Duties

Section 102: Application of general duties to functions relating to licences

597. *Section 92* provides that in exercising any of the powers under this Act to amend licences granted under the Electricity Act 1989 and Gas Act 1986, the Secretary of State is bound by the general duties set out in Part 1 of each of those Acts. It thus ensures consistency with the existing statutory framework for the electricity and gas sectors.
598. *Subsections (2) and (4)* specify that these general duties apply when the Secretary of State is exercising his modification powers under the following sections:
- Sections 41 to 43, in relation to the introduction of a feed-in tariff for small scale low carbon electricity generation;
 - Sections 84 to 86, in relation to directing changes to electricity transmission system licences and codes with the aim of helping to ensure timely and efficient access for electricity generation projects, including renewables;
 - Sections 88 to 91, in relation to the introduction of smart meters; and
 - Sections 95 and 98 in relation to recovering from licensees the costs of meter accuracy services for which the Secretary of State is taking over responsibility from the Gas and Electricity Markets Authority.