



# Energy Act 2010

## 2010 CHAPTER 27

An Act to make provision relating to the demonstration, assessment and use of carbon capture and storage technology; to make provision about reports on decarbonisation of electricity generation and development and use of carbon capture and storage technology; to make provision for requiring benefits to be provided by holders of gas or electricity supply licences; to make provision about functions of the Gas and Electricity Markets Authority; to make provision about general duties of the Secretary of State in relation to gas and electricity markets; to make provision about electricity generation licences; to make provision about persons authorised to supply gas or electricity; and for connected purposes. [8th April 2010]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### CARBON CAPTURE AND STORAGE AND DECARBONISATION

##### *Financial assistance*

#### **1 Financial assistance**

- (1) The Secretary of State may provide financial assistance in respect of CCS demonstration projects.
- (2) If relevant financial assistance is provided in respect of a CCS demonstration project, the Secretary of State may provide financial assistance in respect of additional CCS use at the demonstration station.
- (3) The Secretary of State may make a scheme specifying—

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- (a) a CCS demonstration project, and
  - (b) the person or persons carrying out the project,
- for the purpose of enabling the administrator to provide the person or persons with financial assistance in respect of the project.
- (4) If relevant financial assistance is provided in respect of a CCS demonstration project, the Secretary of State may make a scheme specifying—
- (a) additional CCS use at the demonstration station, and
  - (b) the person or persons carrying out the additional CCS use,
- for the purpose of enabling the administrator to provide the person or persons with financial assistance in respect of the additional CCS use.
- (5) In this section “relevant financial assistance” means assistance provided—
- (a) by the Secretary of State, or
  - (b) by the administrator under an assistance scheme.

## 2 Assistance schemes: further provision

- (1) An assistance scheme may, in particular—
- (a) make provision about any of the matters specified in subsection (2), and
  - (b) impose obligations or confer functions on a person (including the Secretary of State).
- (2) These are the matters referred to in subsection (1)(a)—
- (a) what is to be carried out as part of the assisted activities;
  - (b) financial assistance to be given in respect of assisted activities, including determination of the amount of financial assistance to be given, or to be given at a particular time, by reference to particular matters;
  - (c) administration of the scheme;
  - (d) safety and other standards applicable to assisted activities;
  - (e) measurement and assessment of progress made in carrying out assisted activities;
  - (f) postponement, reduction or withdrawal of financial assistance to be given, and repayment of financial assistance given, in respect of assisted activities, including postponement, reduction, withdrawal and repayment on account of financial assistance given in respect of assisted activities from other sources;
  - (g) payments to the administrator by participants in assisted activities;
  - (h) disclosure of knowledge obtained in, or relating to, assisted activities, including its disclosure to third parties;
  - (i) audit of information (whether by the administrator or a third party), including requirements for audits to be paid for by the person whose information is subject to audit;
  - (j) provision of information, including its provision to third parties;
  - (k) changes to what is to be carried out as part of the assisted activities;
  - (l) changes to the persons who are the participants in relation to assisted activities;
  - (m) termination of the scheme;
  - (n) compliance with the scheme, except imposition of penalties for non-compliance;

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- (o) reviews and appeals.
- (3) The Secretary of State may amend or revoke an assistance scheme.
- (4) Before making, amending or revoking an assistance scheme, the Secretary of State must consult the following persons—
  - (a) the administrator;
  - (b) the Scottish Ministers, but only if the assisted activities are in Scotland;
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (5) If the Secretary of State makes or amends an assistance scheme, the Secretary of State must lay before Parliament the scheme as made or amended.
- (6) If the Secretary of State revokes an assistance scheme, the Secretary of State must lay before Parliament a memorandum of revocation of the scheme.
- (7) The power under section 1(3) or (4) or under subsection (3) of this section may not be exercised—
  - (a) to make a scheme unless all persons who would, by the exercise of the power, be participants consent to the exercise of the power;
  - (b) to amend a scheme unless—
    - (i) the scheme allows for the exercise of the power,
    - (ii) regulations under section 3 allow for the exercise of the power, or
    - (iii) all relevant persons consent to the exercise of the power;
  - (c) to revoke a scheme unless—
    - (i) the scheme allows for the exercise of the power,
    - (ii) regulations under section 3 allow for the exercise of the power, or
    - (iii) all persons who are participants consent to the exercise of the power.
- (8) For the purposes of subsection (7)(b)(iii) each of the following is a relevant person in relation to a scheme that is to be amended—
  - (a) each person who is a participant in relation to the scheme (including a person who would cease to be a participant by the exercise of the power);
  - (b) a person who would, by the exercise of the power, be a participant in relation to the scheme.

### **3 Regulations relating to assistance schemes**

- (1) The Secretary of State may, by regulations, make provision about assistance schemes.
- (2) Regulations under this section may, in particular—
  - (a) make provision about any of the matters specified in section 2(2); and
  - (b) despite the exception in section 2(2)(n), impose penalties (whether financial or not) in respect of failures to comply with the scheme;but the regulations may not create criminal offences.
- (3) Regulations under this section may not apply to an assistance scheme that is in existence at the time the regulations are made, except with the consent of each person who is, at that time, a participant in relation to that scheme.
- (4) Before making regulations under this section, the Secretary of State must consult the following persons—

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- (a) the administrator;
  - (b) the Scottish Ministers;
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (5) Subsection (4) may be satisfied by consultation before, as well as by consultation after, this section comes into force.
- (6) The following are subject to regulations under this section—
- (a) assistance schemes;
  - (b) section 1(3) and (4);
  - (c) section 2.

### *Electricity supply levy*

#### **4 Electricity supply levy**

- (1) The Secretary of State may by regulations provide for an electricity supply levy to be charged in connection with provision of financial assistance—
- (a) in respect of CCS demonstration projects, and
  - (b) in respect of additional CCS use at demonstration stations.
- (2) An electricity supply levy is a levy—
- (a) charged in respect of supplies of electricity that have been, or are expected to be, made, and
  - (b) paid by the persons who make, or are expected to make, the supplies in respect of which the levy is charged.
- (3) The regulations may provide for different rates or different amounts of levy to be charged in different cases.
- (4) The regulations may secure that the levy is not to be charged in respect of particular descriptions of supplies of electricity.
- (5) The regulations may, in particular, make provision about any of the following matters—
- (a) what is a supply of electricity for the purposes of the levy;
  - (b) when a supply of electricity is, or is expected to be, made for those purposes;
  - (c) who makes, or is expected to make, a supply of electricity for those purposes;
  - (d) payment of the levy, including interest in respect of late payment;
  - (e) administration of the levy;
  - (f) audit of information (whether by the administrator or a third party), including requirements for audits to be paid for by the person whose information is subject to audit;
  - (g) provision of information, including its provision to third parties;
  - (h) enforcement of the levy, including—
    - (i) imposition of penalties (whether financial or not, and whether or not in addition to interest charged in respect of late payment), and
    - (ii) recovery of the levy as a debt due to the Crown, but not including the creation of criminal offences;
  - (i) insolvency of persons liable to pay the levy;

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- (j) reviews and appeals.
- (6) Before making regulations under this section, the Secretary of State must consult the following persons—
  - (a) the administrator;
  - (b) such other persons as the Secretary of State thinks it is appropriate to consult.
- (7) Subsection (6) may be satisfied by consultation before, as well as by consultation after, this section comes into force.

### *Reports*

## **5 Reports on decarbonisation and CCS progress**

- (1) The Secretary of State must, for each reporting period, prepare a report on progress during the reporting period—
  - (a) in decarbonising electricity generation in Great Britain (covering separately generation by coal-fired generating stations), and
  - (b) in the development and use of carbon capture and storage technology in Great Britain.
- (2) Each of the first three reports under subsection (1) must include an assessment by the Secretary of State—
  - (a) of whether use of carbon capture and storage technology in generation of electricity on a commercial scale has been, or when it will be, successfully demonstrated;
  - (b) of whether coal-fired generating stations for which appropriate consent is given on or after 1st January 2020 that are built in Great Britain can be expected to be constructed so as to enable use of carbon capture and storage technology on all their generating capacity.
- (3) A report under subsection (1) must also include a review of whether, having regard to the other matters contained in the report, any government policies should be revised and, if so, why.
- (4) In preparing a report under subsection (1), the Secretary of State must—
  - (a) consult the Scottish Ministers and the Welsh Ministers;
  - (b) take into account any relevant points raised by reports by the Committee on Climate Change under section 36 of the Climate Change Act 2008 (reports on progress).
- (5) The Secretary of State must, within 1 year after the end of a reporting period, lay before Parliament a document containing the report under subsection (1) for that period.
- (6) In this section—
  - “appropriate consent” means consent under section 36 of the Electricity Act 1989 or section 114(1)(a) of the Planning Act 2008;
  - “coal-fired generating station” means an electricity generating station powered wholly or mainly by coal;
  - “decarbonising electricity generation” means reducing the amount of carbon dioxide emitted into the atmosphere from electricity generation;
  - “reporting period” means—

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- (a) the period beginning with the passing of this Act and ending with 2011;
- (b) the 3 year period beginning with 2012 and each subsequent 3 year period;

and “the reporting period”, in relation to a report under subsection (1), means the reporting period to which the report relates.

### *General*

## **6 The administrator**

- (1) The Authority is the administrator for the purposes of this Part.
- (2) But the Secretary of State may, by regulations, make provision for a public body to become the administrator (whether in place of the Authority or a person who is administrator by virtue of previous regulations under this section).
- (3) Before making regulations under this section, the Secretary of State must consult the following persons—
  - (a) the person who would cease to be administrator by virtue of the regulations;
  - (b) such other persons as the Secretary of State thinks it is appropriate to consult.
- (4) In this section “public body” includes the Secretary of State.

## **7 CCS demonstration projects and additional CCS use**

- (1) In this Part, “CCS demonstration project” means—
  - (a) a project to demonstrate and assess carbon capture and storage technology through its use in commercial electricity generation, or
  - (b) a project to prepare for, or assess the feasibility of, a project falling within paragraph (a) of this definition.
- (2) In this Part, “additional CCS use” means—
  - (a) the use of carbon capture and storage technology in commercial electricity generation (including bringing the technology into such use), apart from such use in a CCS demonstration project, or
  - (b) activities to prepare for, or assess the feasibility of, use of carbon capture and storage technology falling within paragraph (a) of this definition.
- (3) In this Part, “carbon capture and storage technology” means technology for doing, or contributing to the doing of, any of the following things—
  - (a) capturing carbon dioxide that has been produced by, or in connection with, commercial electricity generation;
  - (b) transporting such carbon dioxide that has been captured;
  - (c) disposing of such carbon dioxide that has been captured, by way of permanent storage.
- (4) For the purposes of this section—
  - “carbon dioxide” includes any substance consisting primarily of carbon dioxide;
  - “commercial electricity generation” means generation of electricity, on a commercial scale.

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## 8 Interpretation of Part

In this Part—

- “additional CCS use” has the meaning given in section 7;
- “administrator” means the person who is the administrator by virtue of section 6;
- “assistance scheme” means a scheme under section 1(3) or (4);
- “assisted activities”, in relation to an assistance scheme, means the CCS demonstration project or additional CCS use specified in an assistance scheme;
- “carbon capture and storage technology” has the meaning given in section 7;
- “CCS demonstration project” has the meaning given in section 7;
- “demonstration station” means an electricity generating station at which a CCS demonstration project is carried out;
- “functions” includes functions involving the exercise of a discretion;
- “participant”, in relation to an assistance scheme, means the person or persons carrying out the assisted activities.

## PART 2

### SCHEMES FOR REDUCING FUEL POVERTY

## 9 Schemes for reducing fuel poverty

- (1) The Secretary of State may by regulations make one or more schemes for the purpose of reducing fuel poverty.
- (2) A scheme under this section (“a support scheme”) must make provision requiring benefits to be provided by licensed suppliers to whom the scheme applies.
- (3) A scheme must provide for the benefits provided under it, taken as a whole, to be provided wholly or mainly to customers determined by or in accordance with the scheme.
- (4) A support scheme may apply to—
  - (a) licensed gas suppliers,
  - (b) licensed electricity suppliers, or
  - (c) both licensed gas suppliers and licensed electricity suppliers,and, in any of those cases, may apply to such suppliers of any description, including any description specified by reference to supplies, whether of gas or electricity, or both, and whether made by the suppliers or by them and associated persons.
- (5) A support scheme may in particular provide for scheme customers to be determined in any of the following ways—
  - (a) by reference to membership of, or to family or other relationship to a member of, a fuel poverty risk group;
  - (b) by scheme suppliers;
  - (c) by, or by reference to evidence provided by, the Secretary of State (or a person providing services to the Secretary of State).

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- (6) Provision included in a support scheme by virtue of subsection (5)(b) may specify requirements about criteria to be applied in determining who are to be scheme customers.
- (7) A support scheme may specify—
- (a) the form of benefits and ways in which they are to be provided under the scheme;
  - (b) the amounts of any benefits to be so provided.
- (8) Subsection (7)(a) includes, in particular, power to provide for—
- (a) payments to be made to or in respect of scheme customers;
  - (b) charges for supplies of gas or electricity to scheme customers to be lower than charges for comparable supplies to other customers;
  - (c) benefits to be provided in the form of goods or services.
- (9) Subsection (7)(b) includes, in particular, power for a support scheme to make provision—
- (a) as to the aggregate amount of benefits to be provided under it (or any part of it) by scheme suppliers, or any scheme supplier, in any period specified in the scheme;
  - (b) as to the amount of any benefit to be provided under it to any scheme customer;
  - (c) as to how any amount is to be determined for the purposes of the scheme, including, in particular, provision—
    - (i) for determining the amount of any benefit provided under the scheme;
    - (ii) for any determination to be made by a scheme supplier;
    - (iii) for any amount of a benefit or benefits to be provided under the scheme to be determined by reference to the amount of any benefit or benefits provided or to be provided under any other support scheme;
    - (iv) for payments by a scheme supplier to be treated as amounts of benefits provided under the scheme;
    - (v) for amounts of benefits provided by a scheme supplier under the scheme to be adjusted by reference to payments made or received, or to be made or received, by the scheme supplier under a relevant reconciliation mechanism;
    - (vi) for benefits provided under the scheme in any period specified in the scheme to be treated as having been provided in any other period so specified.
- (10) Payments by a scheme supplier within subsection (9)(c)(iv) include, in particular—
- (a) the whole, or any part specified in the scheme, of payments in respect of costs incurred for the purposes of determining scheme customers (including to the Secretary of State or the Authority under a requirement imposed under section 10(3));
  - (b) payments under pre-existing arrangements.
- (11) In this section, “relevant reconciliation mechanism”, in relation to a support scheme, means a reconciliation mechanism operated in relation to the scheme (or any part of it) under section 11.



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## **10 Schemes for reducing fuel poverty: supplementary**

- (1) A support scheme may make provision about arrangements to be made by scheme suppliers to ensure that, so far as practicable, scheme customers receive the benefits to be provided under the scheme, which may in particular include provision about—
  - (a) arrangements for enabling scheme suppliers to identify scheme customers;
  - (b) arrangements for drawing to the attention of scheme customers—
    - (i) the fact that benefits are available under the scheme, and
    - (ii) ways of applying for those benefits;
  - (c) arrangements for paying or otherwise providing the benefits.
- (2) A support scheme may include provision for prohibiting scheme suppliers from discriminating against scheme customers or persons who, if they were customers of scheme suppliers, would be scheme customers.
- (3) A support scheme—
  - (a) may require scheme suppliers to make payments to the Secretary of State or the Authority in respect of costs which either of them incurs for the purposes of the provision of evidence as mentioned in section 9(5)(c) for the purposes of the scheme, and
  - (b) must make provision for the payment into the Consolidated Fund of any sums so received.
- (4) Without prejudice to section 31(5), a support scheme may in particular—
  - (a) provide for different criteria to be applied for the purpose of identifying scheme customers of different scheme suppliers;
  - (b) provide for different benefits, or different amounts of benefits, to be provided by different scheme suppliers or to different scheme customers;
  - (c) impose requirements in relation to scheme suppliers by reference to pre-existing arrangements.
- (5) A support scheme may make provision for requiring scheme suppliers to provide to the Authority such information as the Authority may require for the purpose of carrying out its functions in relation to the scheme.
- (6) A support scheme may provide that, in such cases or circumstances as may be specified in the scheme, the Secretary of State may determine that any requirement of the scheme—
  - (a) is not to apply, or
  - (b) is to apply subject to modifications,and the support scheme may provide for any such determination to be made subject to such conditions or limitations as the Secretary of State thinks appropriate.
- (7) If the Secretary of State makes, amends or revokes, a determination in accordance with provision included in a support scheme by virtue of subsection (6), the Secretary of State must lay before Parliament a memorandum of the determination, amendment or revocation.

## **11 Reconciliation mechanism: regulations**

- (1) The Secretary of State may by regulations make provision for the establishment and operation of a reconciliation mechanism.

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- (2) In this section and section 12, “reconciliation mechanism” means arrangements for securing that, after adjustment under the arrangements, the amounts of benefits provided by scheme suppliers under a support scheme or schemes (or part of a support scheme) correspond, so far as reasonably practicable, to an equitable distribution between the scheme suppliers in question of the aggregate amount of benefits provided under the scheme or schemes (or that part of a scheme).
- (3) Regulations under subsection (1) may—
- (a) require scheme suppliers in relation to whom a reconciliation mechanism applies to make payments to the person operating the mechanism (“the operator”) or to another scheme supplier in relation to whom it applies;
  - (b) confer on scheme suppliers in relation to whom a reconciliation mechanism applies entitlements to receive payments from the operator or from another scheme supplier in relation to whom it applies;
  - (c) make provision—
    - (i) as to how the amount of any benefits provided under a support scheme is to be determined, and
    - (ii) as to what constitutes an equitable distribution (as mentioned in subsection (2)),
 for the purposes of the mechanism.
- (4) Regulations which provide for the amounts of any payments mentioned in subsection (3)(a) or (b) to be determined by the operator must, if the operator is not the Authority, include provision for appeals by scheme suppliers against any such determinations.
- (5) Without prejudice to section 31(6), regulations under subsection (1) may confer functions on the Authority, and may, in particular, provide for the Authority to be the operator.
- (6) Regulations under subsection (1) may make provision for requiring scheme suppliers in relation to whom a reconciliation mechanism applies to provide to the Authority or the operator such information as the Authority or, as the case may be, the operator may require for the purpose of carrying out its functions in relation to the mechanism.

## **12 Reconciliation mechanism: licence modifications**

- (1) The Secretary of State may, for the purpose of enabling or facilitating the establishment or operation of a reconciliation mechanism, modify—
- (a) a condition of a particular licence under section 6(1)(b) or (d) of the Electricity Act 1989 (transmission licences and supply licences);
  - (b) the standard conditions incorporated in licences under those provisions by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) Provision included by virtue of the power in subsection (1) in licences, or in a document or agreement relating to licences, need not relate to the activities authorised by the licences.

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- (3) Without prejudice to section 33(4), provision included by virtue of that power in a document or agreement relating to licences may make different provision for different cases.
- (4) Before making a modification under this section, the Secretary of State must consult—
  - (a) holders of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.

### **13 Duty of Authority to keep schemes under review**

The Authority must keep under review—

- (a) the operation of any support scheme, and
- (b) licensed suppliers' compliance with it.

### **14 Regulations under Part 2: procedure etc**

- (1) Before making regulations under section 9, 11 or 15, the Secretary of State must consult—
  - (a) the Authority,
  - (b) in the case of a support scheme that applies to licensed gas suppliers, or a reconciliation mechanism that applies in relation to them, licensed gas suppliers,
  - (c) in the case of a support scheme that applies to licensed electricity suppliers, or a reconciliation mechanism that applies in relation to them, licensed electricity suppliers, and
  - (d) such other persons as the Secretary of State thinks it is appropriate to consult.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, this section comes into force.
- (3) The Secretary of State may not make regulations under section 9 except with the consent of the Treasury.
- (4) A support scheme—
  - (a) must contain provision specifying a period (“the scheme period”) at the end of which the scheme is to cease to have effect, and
  - (b) may provide for the Secretary of State to review the scheme, or any part of it—
    - (i) after such period, or at such intervals, as may be specified in or determined in accordance with the scheme, or
    - (ii) when the Secretary of State is satisfied that one or more conditions specified in the scheme is satisfied.
- (5) Where a support scheme (“the current scheme”) has effect, no regulations may be made under section 9 to—
  - (a) amend or revoke the current scheme, or
  - (b) make another support scheme that applies to any of the scheme suppliers to which the current scheme applies,except following a review of the current scheme conducted in accordance with provision made under subsection (4)(b).

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- (6) Nothing in subsection (5) is to be taken to prevent a support scheme or any part of it being renewed at the end of the scheme period by regulations under section 9 which provide for it to have effect for a further scheme period.

## **15 Schemes for reducing fuel poverty: interpretation**

- (1) For the purposes of this Part, fuel poverty is reduced if—
- (a) the number of people living in fuel poverty is reduced, or
  - (b) the extent to which any person is living in fuel poverty is reduced.
- (2) For the purposes of this Part—
- (a) a person is living in fuel poverty if the person is a member of a household living on a lower income in a home which cannot be kept warm at reasonable cost, and
  - (b) the extent to which a person is living in fuel poverty is reduced if the difference between the cost of keeping the person's home warm and what would be a reasonable cost for doing so is reduced.
- (3) The Secretary of State may by regulations make provision about—
- (a) what is to be regarded as living in fuel poverty for the purposes of this Part;
  - (b) what is to be regarded as a reduction in the extent to which a person is living in fuel poverty for the purposes of this Part.
- (4) Provision made under subsection (3) may, in particular—
- (a) specify what is to be regarded for the purposes of subsection (2)(a) as a lower income, or a reasonable cost, or the circumstances in which a home is to be regarded for those purposes as being warm;
  - (b) amend this section.
- (5) In this Part—
- “fuel poverty risk group” means a category of persons of whom, in the opinion of the Secretary of State, the proportion who are (or, but for a support scheme, would be) living in fuel poverty is higher than the proportion of people in Great Britain who are living in fuel poverty;
- “licensed electricity supplier” means the holder of a licence under section 6(1)(d) of the Electricity Act 1989;
- “licensed gas supplier” means the holder of a licence under section 7A(1) of the Gas Act 1986;
- “licensed supplier” means a licensed electricity supplier or licensed gas supplier;
- “pre-existing arrangements”, in relation to a scheme supplier, means arrangements made by the supplier before the commencement of section 9 with a view to reducing fuel poverty;
- “scheme customer”, in relation to a support scheme and a scheme supplier, means a customer of the supplier to whom benefits are, or are to be, provided by the supplier under the scheme;
- “scheme supplier”, in relation to a support scheme, means a licensed supplier to whom the scheme applies;
- “support scheme” has the meaning given by section 9(2).

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### PART 3

#### REGULATION OF GAS AND ELECTRICITY MARKETS

##### *General duties of the Gas and Electricity Markets Authority and the Secretary of State*

#### **16 Amendments of section 4AA of the Gas Act 1986**

- (1) Section 4AA of the Gas Act 1986 is amended as follows.
- (2) In subsection (1) omit the words following “pipes”.
- (3) After subsection (1) insert—
  - “(1A) Those interests of existing and future consumers are their interests taken as a whole, including—
    - (a) their interests in the reduction of gas-supply emissions of targeted greenhouse gases; and
    - (b) their interests in the security of the supply of gas to them.
  - (1B) The Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes.
  - (1C) Before deciding to carry out functions under this Part in a particular manner with a view to promoting competition as mentioned in subsection (1B), the Secretary of State or the Authority shall consider—
    - (a) to what extent the interests referred to in subsection (1) of consumers would be protected by that manner of carrying out those functions; and
    - (b) whether there is any other manner (whether or not it would promote competition as mentioned in subsection (1B)) in which the Secretary of State or the Authority (as the case may be) could carry out those functions which would better protect those interests.”
- (4) In subsection (2)—
  - (a) for the words from the beginning to “having regard to” substitute “ In performing the duties under subsections (1B) and (1C), the Secretary of State or the Authority shall have regard to ”;
  - (b) in paragraph (b), for “or Part 5 of the Energy Act 2008” substitute “ , Part 5 of the Energy Act 2008 or section 4, Part 2, or sections 26 to 29 of the Energy Act 2010 ”.
- (5) In subsection (3) for “that duty” substitute “ the duties under subsections (1B), (1C) and (2) ”.
- (6) In subsection (5)—
  - (a) for the first “subsection” substitute “ subsections (1B) and ”;
  - (b) omit “(so far as not otherwise required to do so by this subsection)”.
- (7) After subsection (5A) insert—

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“(5B) In subsection (1A)—

“emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);

“gas-supply emissions” in relation to emissions of a targeted greenhouse gas, means any such emissions (wherever their source) that are wholly or partly attributable to, or to commercial activities connected with, the shipping, transportation or supply of gas conveyed through pipes;

“targeted greenhouse gases” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).”

(8) In subsection (6) after “subsections” insert “ (1C), ”.

## 17 Amendments of section 3A of the Electricity Act 1989

(1) Section 3A of the Electricity Act 1989 is amended as follows.

(2) In subsection (1) omit the words following “transmission systems”.

(3) After subsection (1) insert—

“(1A) Those interests of existing and future consumers are their interests taken as a whole, including—

- (a) their interests in the reduction of electricity-supply emissions of targeted greenhouse gases; and
- (b) their interests in the security of the supply of electricity to them.

(1B) The Secretary of State and the Authority shall carry out their respective functions under this Part in the manner which the Secretary of State or the Authority (as the case may be) considers is best calculated to further the principal objective, wherever appropriate by promoting effective competition between persons engaged in, or in commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors.

(1C) Before deciding to carry out functions under this Part in a particular manner with a view to promoting competition as mentioned in subsection (1B), the Secretary of State or the Authority shall consider—

- (a) to what extent the interests referred to in subsection (1) of consumers would be protected by that manner of carrying out those functions; and
- (b) whether there is any other manner (whether or not it would promote competition as mentioned in subsection (1B)) in which the Secretary of State or the Authority (as the case may be) could carry out those functions which would better protect those interests.”

(4) In subsection (2)—

- (a) for the words from the beginning to “having regard to” substitute “ In performing the duties under subsections (1B) and (1C), the Secretary of State or the Authority shall have regard to ”;
- (b) in paragraph (b), for “or Part 2 or 5 of the Energy Act 2008” substitute “ , Part 2 or 5 of the Energy Act 2008 or section 4, Part 2, or sections 26 to 29 of the Energy Act 2010 ”.

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- (5) In subsection (3) for “that duty” substitute “ the duties under subsections (1B), (1C) and (2) ”.
- (6) In subsection (5)—
- (a) for the first “subsection” substitute “ subsections (1B) and ”;
  - (b) omit “(so far as not otherwise required to do so by this subsection)”.
- (7) After subsection (5A) insert—
- “(5B) In subsection (1A)—
- “emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);
  - “electricity-supply emissions” in relation to emissions of a targeted greenhouse gas, means any such emissions (wherever their source) that are wholly or partly attributable to, or to commercial activities connected with, the generation, transmission, distribution or supply of electricity or the provision or use of electricity interconnectors;
  - “targeted greenhouse gases” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).”
- (8) In subsection (6) after “subsections” insert “ (1C), ”.

VALID FROM 16/07/2012

*Exploitation of electricity trading and transmission arrangements*

**18 Power to make modifications**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 6(1)(a) of the Electricity Act 1989 (generation licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1) of that Act, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power in subsection (1) for the purpose only of limiting or eliminating the circumstances in which, or the extent to which, a licence holder may obtain an excessive benefit from electricity generation in a particular period (“the relevant period”).
- (3) The licence holder obtains an excessive benefit from electricity generation in the relevant period if—
- (a) the licence holder and the transmission system operator enter into arrangements (“the relevant arrangements”) (whether or not under the electricity trading and transmission arrangements), and
  - (b) one or more of the following conditions is met.
- (4) Condition 1 is that—

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- (a) the licence holder fails to notify electricity generation for the relevant period that would be economic to carry out, and
  - (b) under the relevant arrangements, the licence holder may be, or is to be, paid an excessive amount by the transmission system operator in connection with an increase in electricity generation in the relevant period.
- (5) Condition 2 is that, under the relevant arrangements—
- (a) the licence holder may, or is to, pay the transmission system operator an excessively low amount, or
  - (b) the transmission system operator may, or is to, pay the licence holder an excessively high amount,
- in connection with a reduction in electricity generation in the relevant period.
- (6) Condition 3 is that, under the relevant arrangements, the transmission system operator may, or is to, pay the licence holder an excessively high amount in connection with the licence holder preparing for the possible cessation of generation of electricity by particular generating plant in the relevant period.
- (7) Condition 4 is that—
- (a) the relevant arrangements relate to an increase or reduction in electricity generation in the relevant period, and
  - (b) under the arrangements, the licence holder may, or is to, obtain an excessive benefit.
- (8) Modifications made under subsection (1) may include provision relating to one or more of the following—
- (a) the operation of generating stations by the licence holder (including the amount of electricity generated and offers to generate electricity);
  - (b) amounts payable by, or to, the licence holder or any other person;
  - (c) offers by the licence holder or any other person to pay amounts.
- (9) Before making modifications under subsection (1), the Secretary of State must consult—
- (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (10) Subsection (9) may be satisfied by consultation before, as well as by consultation after, this Act comes into force.
- (11) In this section—
- (a) a reference to a licence holder notifying electricity generation for a period is a reference to the licence holder notifying the transmission system operator before the start of the period, in accordance with the electricity trading and transmission arrangements, of the electricity generation which the licence holder proposes to undertake in that period;
  - (b) a reference to a licence holder's notified electricity generation for a period is to be construed accordingly.
- (12) In this section, a reference to an increase or reduction in electricity generation in the relevant period—
- (a) is a reference to an increase or reduction in comparison to the notified electricity generation for that period; and



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- (b) includes an increase or reduction in generation of electricity by particular generating plant, whether or not there is an overall increase or reduction in electricity generation in that period.
- (13) In subsection (3)(a), the reference to the licence holder and the transmission system operator entering into arrangements includes a reference to one of them making a bid or offer to the other; and references in this section to the relevant arrangements are to be construed accordingly.
- (14) In this section—
  - “electricity trading and transmission arrangements” means arrangements relating to the trading and transmission of electricity in Great Britain that are in place under Chapter 1 of Part 3 of the Energy Act 2004;
  - “transmission system operator” means the person operating the national transmission system for Great Britain (and for this purpose “transmission system” has the same meaning as in the Electricity Act 1989 — see section 4(4) of that Act).

## **19 The Authority's interpretation and enforcement of modifications**

- (1) The Authority must publish a document setting out advice and information on the Authority's intended approach to the interpretation and enforcement of modifications.
- (2) Before publishing a document under this section, the Authority must consult—
  - (a) the holder of any licence under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Secretary of State, and
  - (c) such other persons as the Authority think it is appropriate to consult.
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, this section comes into force.
- (4) In this section “modification” means a modification under section 18(1).

## **20 Final and provisional orders: appeals**

- (1) This section applies in relation to any final or provisional order under section 25 of the Electricity Act 1989 which relates to a relevant condition (within the meaning of that section) that has effect by virtue of the exercise of the power in section 18(1).
- (2) The licence holder to whom the order relates may appeal to the Tribunal against the order.
- (3) On an appeal under this section, the Tribunal may do either or both of the following—
  - (a) redetermine the appealed matter, in whole or in part;
  - (b) remit the appealed matter, in whole or in part, to the Authority.
- (4) If the Tribunal redetermines the appealed matter, the Tribunal may do one or more of the following—
  - (a) uphold the order, in whole or in part;
  - (b) set aside the order, in whole or in part;
  - (c) substitute for the order, in whole or in part, the Tribunal's own final or provisional order.

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- (5) Unless the Tribunal orders otherwise, an obligation of a person to comply with the order is not affected by the making of an appeal under this section against the order.
- (6) Subsections (2) to (5) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.
- (7) Except as provided by this section, the validity of the order may not be questioned by any legal proceedings whatever.
- (8) A decision of the Tribunal on an appeal under this section has the same effect as, and may be enforced in the same manner as, a decision of the Authority.
- (9) In this section—
  - “appealed matter” means the matter to which the order relates;
  - “Tribunal” means the Competition Appeal Tribunal;
  - “Tribunal rules” means rules under section 15 of the Enterprise Act 2002.

## **21 Penalties: appeals**

- (1) This section applies in relation to any penalty under section 27A of the Electricity Act 1989 which relates to a relevant condition (within the meaning of that section) that has effect by virtue of the exercise of the power in section 18(1).
- (2) The licence holder upon whom the penalty is imposed may appeal to the Tribunal against—
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty, or
  - (c) any date by which the penalty, or any part of it, is required to be paid.
- (3) On an appeal under this section, the Tribunal may do any of the following—
  - (a) uphold the penalty;
  - (b) set aside the penalty;
  - (c) substitute for the penalty a penalty of an amount decided by the Tribunal;
  - (d) vary any date by which the penalty, or any part of it, is required to be paid.
- (4) If an appeal is made under this section, the penalty is not required to be paid until the appeal has been determined.
- (5) Subsections (2) to (4) do not restrict the power to make Tribunal rules; and those subsections are subject to Tribunal rules.
- (6) Except as provided by this section, the validity of the penalty may not be questioned by any legal proceedings whatever.
- (7) In the case of an appeal under this section—
  - (a) a decision of the Tribunal has the same effect as, and may be enforced in the same manner as, a decision of the Authority;
  - (b) section 27A(10) of the Electricity Act 1989 (payment into the Consolidated Fund) applies to penalties which the Tribunal substitutes under subsection (3)(c) above as it applies to penalties imposed by the Authority.
- (8) In this section—
  - “Tribunal” means the Competition Appeal Tribunal;

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“Tribunal rules” means rules under section 15 of the Enterprise Act 2002.

## 22 Further appeals

- (1) An appeal lies to the appropriate court—
  - (a) on a point of law arising from any decision of the Tribunal under section 20;
  - (b) from a decision of the Tribunal under section 21(3)(a), (b) or (c); and
  - (c) on a point of law arising from any other decision of the Tribunal under section 21.
- (2) An appeal under this section—
  - (a) may be brought by a party to the proceedings before the Tribunal; and
  - (b) requires the permission of the Tribunal or the appropriate court.
- (3) In this section—
  - “appropriate court” means—
    - (a) the Court of Appeal, or
    - (b) in the case of an appeal from Tribunal proceedings in Scotland, the Court of Session;
  - “Tribunal” means the Competition Appeal Tribunal.

## 23 Expiry of power

- (1) The power in section 18(1) may not be exercised after—
  - (a) the end of the period of 5 years beginning with the commencement day, or
  - (b) such longer period (if any) as is specified in an order under subsection (2).
- (2) The Secretary of State may by order specify for the purposes of this section a period of—
  - (a) more than 5 years, but
  - (b) not more than 7 years,beginning with the commencement day.
- (3) No order may be made under subsection (2) after the end of the period of 5 years beginning with the commencement day.
- (4) Before making an order under subsection (2), the Secretary of State must consult—
  - (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (5) All modifications cease to have effect after the expiry day.
- (6) But that does not—
  - (a) affect the previous operation of a modification,
  - (b) prevent the exercise of any function, power or right of any person in respect of the previous operation of a modification, or
  - (c) affect any penalty, order or other enforcement action in respect of the previous operation of a modification.
- (7) The Secretary of State may make such provision modifying a regulatory instrument as he or she considers appropriate in consequence of subsections (1) and (5).

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- (8) Before making a modification under subsection (7), the Secretary of State must consult—
- (a) holders of licences under section 6(1)(a) of the Electricity Act 1989,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (9) In this section—
- “commencement day” means the day on which section 18 comes into force;
- “expiry day” means the day on which the power in section 18(1) ceases to be exercisable by virtue of this section;
- “modification” means a modification under section 18(1);
- “regulatory instrument” means a licence, standard conditions, or a document or agreement, as mentioned in section 18(1).

*Time limit for imposition of financial penalties by the Gas and Electricity Markets Authority*

#### **24 Time limit for the imposition of financial penalties**

- (1) In section 30C(1) of the Gas Act 1986 (time limit on imposition of a penalty for contravention of a relevant condition or requirement or for failure to achieve a performance standard), for “12 months” substitute “ five years ”.
- (2) In section 27C(1) of the Electricity Act 1989 (time limit on imposition of a penalty for contravention of a relevant condition or requirement or for failure to achieve a performance standard), for “12 months” substitute “ five years ”.
- (3) The amendments made by this section do not apply in relation to any contravention or failure occurring before the day on which this section comes into force.

*Notice of unilateral changes to domestic supply contracts*

#### **25 Modifications of supply licences: notice of unilateral changes to domestic supply contracts**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (supply licences);
  - (b) the standard conditions incorporated in licences under that provision by virtue of section 8 of that Act;
  - (c) a condition of a particular licence under section 6(1)(d) of the Electricity Act 1989 (supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act.
- (2) The Secretary of State may make a modification under subsection (1) only for the purpose of securing that customers under contracts for domestic supply are notified about changes which licence holders make under unilateral variation terms in—
  - (a) any terms of such contracts, or

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- (b) the price charged for energy supplied under such contracts, within a period specified in (or determined by reference to criteria set by) the licence as so modified.
- (3) Modifications under subsection (1) may include provision—
- (a) requiring a notice to be given before or after the change to which it relates is made,
  - (b) about the form of a notice and the manner in which it is to be given,
  - (c) about the effect of a notice,
  - (d) about the effect of failure to give a notice, or
  - (e) requiring a notice to be accompanied by other information.
- (4) The power conferred by subsection (1) may not be exercised after the end of the period of 3 years beginning with the day on which that subsection comes into force.
- (5) Before making a modification under subsection (1), the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the Authority, and
  - (c) such other persons as the Secretary of State thinks it is appropriate to consult.
- (6) In this section a “unilateral variation term” means a term in a contract for domestic supply under which a licence holder is permitted to change a term of the contract or a price charged for energy supplied under it, without the agreement of the customer to the particular changes.
- (7) For the purposes of subsection (2), agreement by a customer under a contract for domestic supply to a unilateral variation term (whether by entering into the contract or otherwise) is not to be taken to constitute agreement to any particular changes made by virtue of the term.
- (8) In this section—
- “a contract for domestic supply” means a contract for the supply of energy by a licence holder to a customer at domestic premises wholly or mainly for domestic purposes;
  - “energy”—
    - (a) in relation to the holder of a licence under section 7A(1) of the Gas Act 1986, means gas;
    - (b) in relation to the holder of a licence under section 6(1)(d) of the Electricity Act 1989, means electricity.

#### *Adjustment of energy charges*

### **26 Adjustment of charges to help disadvantaged groups of customers**

- (1) If the Secretary of State considers that some customers of an energy supplier (the “disadvantaged customers”) are treated less favourably than other customers of the energy supplier (the “advantaged customers”) as respects charges for energy, the Secretary of State may by regulations make a scheme for the adjustment of charges for energy with a view to eliminating or reducing the less favourable treatment.

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- (2) The following provisions of this section apply for the purposes of making regulations under this section.
- (3) The Secretary of State may take into account as the disadvantaged customers—
  - (a) some or all of the customers of a category set out in subsection (5), or
  - (b) any combination of such customers (whether from one or more of the categories).
- (4) The Secretary of State may take into account as the advantaged customers—
  - (a) some or all of the customers of a category set out in subsection (5), or
  - (b) any combination of such customers (whether from one or more of the categories).
- (5) The categories of customers mentioned in subsection (3) and (4) are—
  - (a) electricity customers;
  - (b) gas customers;
  - (c) electricity and gas customers.
- (6) The Secretary of State may take into account—
  - (a) as respects a relevant electricity customer, the customer's charges for electricity;
  - (b) as respects a relevant gas customer, the customer's charges for gas;
  - (c) as respects a relevant electricity and gas customer, the customer's charges for electricity, or charges for gas, or charges for electricity and gas.
- (7) The Secretary of State may make such assumptions and calculations as he or she considers to be appropriate for the purposes of this section, including assumptions and calculations to enable him or her to take into account—
  - (a) different charges for the same kind of energy, or
  - (b) charges for different kinds of energy.
- (8) In this section “relevant”, in relation to a customer, means a customer who is one of the disadvantaged customers or one of the advantaged customers.

## **27 Schemes: supplementary**

- (1) A scheme may include—
  - (a) provision for the adjustment of charges by relevant persons (as well as by one or more energy suppliers), and
  - (b) in relation to charges payable to energy suppliers, provision for the adjustment of charges payable by customers who are not the disadvantaged customers (as well as by the disadvantaged customers).
- (2) A scheme must—
  - (a) describe the disadvantaged customers,
  - (b) specify the persons whose charges are covered by the scheme, and
  - (c) set out the basis of the adjustment of the charges.
- (3) If a scheme does not relate to the whole of Great Britain, it must specify the area or areas to which it relates.
- (4) A scheme may—

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- (a) require energy suppliers or relevant persons to supply information of any specified description, in any specified form, to any other such persons, and
  - (b) provide for the modification of conditions of licences,
- for the purpose of facilitating the implementation of the scheme.

(5) In this section “scheme” means a scheme under section 26.

## **28 Regulations adjusting energy charges: supplementary**

(1) Regulations may contain one or more schemes under section 26 relating to the same energy supplier or to different energy suppliers.

(2) Before making regulations, the Secretary of State must give notice—

- (a) stating that it is proposed to make regulations and setting out the effect of the proposed regulations,
- (b) stating the reasons why it is proposed to make the regulations, and
- (c) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed regulations may be made;

and must consider any representations or objections which are duly made and not withdrawn.

(3) The notice must be given—

- (a) by serving a copy of it on the persons whose charges are covered by the proposed regulations, and
- (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing the proposed regulations to the attention of other persons likely to be affected by them.

(4) Regulations continue in force for such period not exceeding 3 years as is specified in the regulations; but that does not prevent the making of other regulations to come into force at the end of that period.

(5) The Secretary of State may by order require energy suppliers and relevant persons to supply information of any specified description, in any specified form, to any other such persons for the purpose of enabling the making of regulations.

(6) The Authority—

- (a) must monitor the effect of regulations and report its findings to the Secretary of State whenever he or she directs it to do so, and
- (b) may require energy suppliers and relevant persons to supply to the Authority, in any specified form, such information as it requires for carrying out that duty.

(7) In this section “regulations” means regulations under section 26.

## **29 Adjustment of energy charges: interpretation**

(1) This section applies for the purposes of sections 26 to 28 and this section (the “charging adjustment provisions”).

(2) In the charging adjustment provisions, references to customers do not include customers of a description excluded by an order made by the Secretary of State.

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- (3) Expressions used in the charging adjustment provisions and in Part 1 of the Electricity Act 1989 have the same meaning in those provisions, so far as they relate to electricity, as the expressions have in Part 1 of the 1989 Act.
- (4) Expressions used in the charging adjustment provisions and in Part 1 of the Gas Act 1986 have the same meaning in those provisions, so far as they relate to gas, as the expressions have in Part 1 of the 1986 Act.
- (5) In the charging adjustment provisions—
- “disadvantaged customers” has the meaning given in section 26(1);
  - “electricity customer”, in relation to an energy supplier, means a person who is a customer of the energy supplier only as respects electricity;
  - “electricity and gas customer”, in relation to an energy supplier, means a person who is a customer of the energy supplier as respects electricity and as respects gas;
  - “energy” means—
    - (a) electricity,
    - (b) gas, or
    - (c) electricity and gas;
  - “energy supplier” means any of the following—
    - (a) a person that is an authorised supplier for the purposes of the Electricity Act 1989;
    - (b) a person that is an authorised supplier for the purposes of the Gas Act 1986;
    - (c) a person that is both—
      - (i) an authorised supplier for the purposes of the Electricity Act 1989, and
      - (ii) an authorised supplier for the purposes of the Gas Act 1986; or
    - (d) two persons—
      - (i) one of which is an authorised supplier for the purposes of the Electricity Act 1989,
      - (ii) the other of which is an authorised supplier for the purposes of the Gas Act 1986, and
      - (iii) one, or each, of which is a group undertaking in relation to the other (“group undertaking” having the meaning given in section 1161 of the Companies Act 2006);
  - “gas customer”, in relation to an energy supplier, means a person who is a customer of the energy supplier only as respects gas;
  - “relevant person” means—
    - (a) in relation to electricity—
      - (i) an authorised distributor, and
      - (ii) a person authorised by a licence or exemption to participate in the transmission of electricity;
    - (b) in relation to gas—
      - (i) an authorised transporter, and
      - (ii) a person authorised by a licence or exemption to arrange with any gas transporter for gas to be introduced into, conveyed by means of, or taken out of a pipe-line system operated by that transporter.



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## PART 4

### FINAL PROVISIONS

#### 30 General duties of the Authority and the Secretary of State

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties, as amended by section 16) apply to the carrying out, in relation to gas or holders of licences under section 7A(1) of that Act, of functions conferred on the Secretary of State or the Authority by or under Part 2 or 3 of this Act as they apply in relation to the carrying out of functions conferred on that person by or under Part 1 of that Act.
- (2) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties, as amended by section 17) apply to the carrying out, in relation to electricity or holders of licences under section 6(1) of that Act, of functions conferred on the Secretary of State or the Authority by or under Part 2 or 3 of this Act as they apply in relation to the carrying out of functions conferred on that person by or under Part 1 of that Act.

#### 31 Orders and regulations

- (1) Orders and regulations under this Act are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under—
  - (a) any provision of Part 1,
  - (b) section 9 or 15(3), or
  - (c) section 26,may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (3) But subsection (2)(a) does not apply to a statutory instrument that contains regulations under section 6 if—
  - (a) the regulations under that section do not amend an Act, and
  - (b) the instrument does not contain regulations under any other provision of Part 1;and, in such a case, the instrument is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing—
  - (a) regulations under section 11, or
  - (b) an order under section 23, 28(5) or 29(2),is subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) An order or regulations under this Act may—
  - (a) include incidental, supplementary and consequential provision;
  - (b) make transitory or transitional provision or savings;
  - (c) make different provision for different cases or circumstances or for different purposes.
- (6) Regulations under Part 1 or 2 may impose obligations or confer functions on a person (including the Secretary of State).

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- (7) Regulations under Part 1 may amend provision made by or under an Act or an Act of the Scottish Parliament (whenever passed or made).
- (8) But the Secretary of State must obtain the consent of the Scottish Ministers before making regulations under Part 1 which contain provision that—
  - (a) is included by virtue of subsection (7),
  - (b) extends to Scotland, and
  - (c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.
- (9) If, but for this subsection, an instrument containing regulations under this Act would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not a hybrid instrument.
- (10) In this section “order” means an order made by the Secretary of State.

### **32 Modifications of licences etc: Parliamentary procedure**

- (1) Before making modifications under section 18(1) (exploitation of electricity trading and transmission arrangements) or section 25(1) (notice of unilateral changes to domestic supply contracts), the Secretary of State must lay a draft of the modifications before Parliament.
- (2) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (3) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (4) Subsection (2) does not prevent a new draft of proposed modifications being laid before Parliament.
- (5) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (6) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.

### **33 Licence modifications etc**

- (1) This section applies in relation to a power to make modifications conferred by—
  - (a) section 12(1) (schemes for reducing fuel poverty);
  - (b) section 18(1) (exploitation of electricity trading and transmission arrangements);
  - (c) section 25(1) (notice of unilateral changes to domestic supply contracts).
- (2) Subsection (5) also applies in relation to the power conferred by section 23(7) (expiry of power conferred by section 18(1)).
- (3) The power—

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- (a) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (b) may be exercised differently in different cases;
  - (c) includes a power to make incidental, supplemental, consequential or transitional modifications.
- (4) Provision included in licences by virtue of the power may make different provision for different cases.
- (5) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (6) A modification of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the 1986 Act or Part 1 of the 1989 Act.
- (7) Where the Secretary of State makes a modification of the standard conditions of a licence of any type, the Authority must—
- (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.

### **34 Interpretation of Act**

In this Act “the Authority” means the Gas and Electricity Markets Authority.

### **35 Consequential amendments**

The Schedule (consequential amendments) has effect.

#### **Commencement Information**

**II** S. 35 partly in force; s. 35 in force for specified purposes at 8.6.2010 see s. 38(2)(b)

### **36 Financial provisions**

- (1) The following are to be paid out of money provided by Parliament—
- (a) any expenditure incurred by the Secretary of State by virtue of this Act;
  - (b) any expenditure incurred by the Authority by virtue of this Act;
  - (c) any increase attributable to this Act in the sums payable out of money so provided under any other enactment.
- (2) Any assistance scheme or regulations under Part 1 requiring payment of sums to the Secretary of State or the administrator (within the meaning of that Part) must make provision for the payment of those sums into the Consolidated Fund.

### **37 Extent**

This Act extends to England and Wales and Scotland.

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### **38 Commencement**

- (1) This Part, apart from section 35 (and the Schedule), comes into force on the day on which this Act is passed.
- (2) The following provisions come into force on such day as the Secretary of State may by order appoint—
  - (a) sections 18 to 23;
  - (b) paragraphs 7 and 8 of the Schedule (and, so far as relating to them, paragraphs 1 and 5 of the Schedule and section 35).
- (3) Subject to subsections (1) and (2), this Act comes into force at the end of the period of 2 months beginning with the day on which it is passed.

### **39 Short title**

This Act may be cited as the Energy Act 2010.

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## SCHEDULE

Section 35

### CONSEQUENTIAL AMENDMENTS

#### *Gas Act 1986*

1 The Gas Act 1986 is amended as follows.

#### **Commencement Information**

**I2** Sch. para. 1 partly in force; Sch. para. 1 in force for specified purposes at 8.6.2010 see s. 38(2)(b)

- 2 (1) In section 28(8) (orders for securing compliance), in the definition of “relevant requirement”—
- (a) for “, 33F, 41A or 41B” substitute “ or 33F ”;
  - (b) at the end insert “ or section 9 or 11 of the Energy Act 2010 (schemes for reducing fuel poverty) or sections 26 to 29 of that Act (adjustment of charges to help disadvantaged groups of customers) ”.
- (2) Nothing in sub-paragraph (1)(b) is to be taken to limit the kind of provision that can be made by regulations under section 9 or 11 about enforcement of a requirement imposed by, or payment of a sum due under, the regulations.
- 3 Omit sections 41A and 41B (adjustment of charges to help disadvantaged groups of electricity customers).
- 4 In section 64(2) (provisions as to orders), omit “41A,”.

#### *Electricity Act 1989*

5 The Electricity Act 1989 is amended as follows.

#### **Commencement Information**

**I3** Sch. para. 5 partly in force; Sch. para. 5 in force for specified purposes at 8.6.2010 see s. 38(2)(b)

- 6 (1) In section 25(8) (orders for securing compliance), in the definition of “relevant requirement”—
- (a) for “, 42C, 43A or 43B” substitute “ or 42C ”;
  - (b) at the end insert “ or section 9 or 11 of the Energy Act 2010 (schemes for reducing fuel poverty) or sections 26 to 29 of that Act (adjustment of charges to help disadvantaged groups of customers) ”.
- (2) Nothing in sub-paragraph (1)(b) is to be taken to limit the kind of provision that can be made by regulations under section 9 or 11 about enforcement of a requirement imposed by, or payment of a sum due under, the regulations.

VALID FROM 16/07/2012

- 7 In section 27 (validity and effect of orders), after subsection (8) insert—
- “(9) Subsections (1) to (3) do not apply in the case of a final or provisional order that relates to a relevant condition imposed by the exercise of the

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power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).

(10) For provision about appeals relating to such orders, see section 20 of the Energy Act 2010.”

VALID FROM 16/07/2012

8 In section 27E (appeals), after subsection (9) insert—

“(10) This section does not apply in the case of a penalty that relates to a relevant condition imposed by the exercise of the power in section 18(1) of the Energy Act 2010 (prevention of exploitation of electricity trading and transmission arrangements).

(11) For provision about appeals relating to such penalties, see section 21 of the Energy Act 2010.”

9 Omit sections 43A and 43B (adjustment of charges to help disadvantaged groups of gas customers).

10 In section 106(2) (provisions as to orders), omit “43A,”.

#### *Utilities Act 2000*

11 The Utilities Act 2000 is amended as follows.

12 In section 33(1) (standard conditions of electricity licences)—

- (a) after paragraph (c) omit “or”;
- (b) after paragraph (d) insert “or
- (e) under the Energy Act 2010.”

13 Omit section 69 (help for disadvantaged groups of electricity customers).

14 In section 81(2) (standard conditions of gas licences)—

- (a) for “2004 or” substitute “ 2004, ”;
- (b) after “2008” insert “ or under the Energy Act 2010 ”.

15 Omit section 98 (help for disadvantaged groups of gas customers).

16 In section 105 (general restrictions on disclosure of information)—

- (a) in subsection (1), after “2004” insert “ or Part 2 or section 27 or 28 of the Energy Act 2010 ”;
- (b) in subsection (3)(a), after “2008” insert “ , Part 2 or section 28 of the Energy Act 2010 ”.

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**Changes to legislation:**

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