



Energy Act 2010

2010 CHAPTER 27

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

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- (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—
 - “(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”.

(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),”.

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;

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- (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—
 - (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
 - (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).

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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.
- (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;
 - “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.

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- (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).
- (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
 - (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 be taken to constitute agreement to any particular changes made by virtue of the term.
- (8) In this section—

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“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.
- (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—
 - (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.

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- (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.
- (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,

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- (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.