



# Energy Act 2011

## 2011 CHAPTER 16

An Act to make provision for the arrangement and financing of energy efficiency improvements to be made to properties by owners and occupiers; about the energy efficiency of properties in the private rented sector; about the promotion by energy companies of reductions in carbon emissions and home-heating costs; about information relating to energy consumption, efficiency and tariffs; for increasing the security of energy supplies; about access to upstream petroleum infrastructure and downstream gas processing facilities; about a special administration regime for energy supply companies; about designations under the Continental Shelf Act 1964; about licence modifications relating to offshore transmission and distribution of electricity; about the security of nuclear construction sites; about the decommissioning of nuclear sites and offshore infrastructure; for the use of pipelines for carbon capture and storage; for an annual report on contribution to carbon emissions reduction targets; for action relating to the energy efficiency of residential accommodation in England; for the generation of electricity from renewable sources; about renewable heat incentives in Northern Ireland; about the powers of the Coal Authority; for an amendment of section 137 of the Energy Act 2004; for the amendment and repeal of measures relating to home energy efficiency; and for connected purposes. [18th October 2011]

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:—

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**Status:** Point in time view as at 01/01/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

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## PART 1

### ENERGY EFFICIENCY

#### CHAPTER 1

##### GREEN DEAL

###### *Introductory*

### 1 Green deal plans

- (1) This section applies for the purposes of this Chapter.
- (2) An energy plan is an arrangement made by the occupier or owner of a property for a person to make energy efficiency improvements to the property.
- (3) An energy plan is a green deal plan if—
  - (a) the energy efficiency improvements are to be paid for wholly or partly in instalments, and
  - (b) all of the requirements listed in paragraphs (a) to (e) of subsection (4) are met in relation to the plan at the time when it is made.
- (4) The requirements are—
  - (a) the property is an eligible property,
  - (b) the energy efficiency improvements fall within a description specified in an order made by the Secretary of State (“qualifying energy improvements”),
  - (c) the conditions mentioned in section 4 as to assessment of the property and other matters have been met,
  - (d) the conditions mentioned in section 5 as to the terms of the plan and other matters are met, and
  - (e) a relevant energy supplier supplies, or is to supply, energy to the property.
- (5) Subsection (6) applies to a green deal plan from the time when—
  - (a) improvements have been installed in accordance with section 7,
  - (b) the plan is confirmed in accordance with section 8, and
  - (c) the requirements imposed by virtue of section 9 or 10 are met.
- (6) The payments in instalments agreed in the plan are to be—
  - (a) made by the person who is for the time being liable to pay the energy bills for the property,
  - (b) made to the relevant energy supplier through the energy bills for the property,
  - (c) recoverable as a debt by the relevant energy supplier from the person referred to in paragraph (a), and
  - (d) recovered and held by the relevant energy supplier as agent and trustee for the person who made the improvements (unless the relevant energy supplier is also that person).
- (7) Subsection (6) applies irrespective of whether the person referred to in paragraph (a) is the person who entered into the plan.

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- (8) Subsection (6) is subject to—
- (a) provision made in regulations under section 34;
  - (b) any suspension or cancellation, by virtue of provision made in regulations under section 3(3)(h) or (i), 6(4), 16 or 35, of liability to make payments.
- (9) For the purposes of subsection (4)(a) a property is an eligible property unless it falls within a description specified in an order made by the Secretary of State.

**Commencement Information**

**II** S. 1 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(a)(2)

## 2 Green deal plans: supplementary

- (1) This section applies for the purposes of this Chapter.
- (2) The occupier or owner who makes the arrangement referred to in section 1(2) is the “improver” and the person who makes the improvements is the “green deal provider”.
- (3) The person referred to in section 1(6)(a) is the “bill payer”.
- (4) References to energy efficiency improvements, in relation to a property, are to—
- (a) measures for improving efficiency in the use in the property of electricity, gas conveyed through pipes or any other source of energy which is specified in an order made by the Secretary of State, or
  - (b) measures falling within subsection (5) or (6).
- (5) Measures fall within this subsection if—
- (a) they are any of the following—
    - (i) measures for increasing the amount of electricity generated, or heat produced, by microgeneration (within the meaning given by section 26(1) of the Climate Change and Sustainable Energy Act 2006);
    - (ii) any other measures for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies;
    - (iii) measures for reducing the consumption of such energy as is mentioned in subsection (4), and
  - (b) they are specified in an order made by the Secretary of State.
- (6) Measures fall within this subsection if—
- (a) they are installed at the property for the purpose of supplying to it any of the following types of energy—
    - (i) electricity generated by a generating station operated for the purposes of producing heat, or a cooling effect, in association with electricity;
    - (ii) heat produced in association with electricity or steam produced from (or air or water heated by) such heat;
    - (iii) any gas or liquid subjected to a cooling effect produced in association with electricity, and
  - (b) they are specified in an order made by the Secretary of State.

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- (7) For the purposes of subsection (5)(a)(ii) electricity is generated, or heat is produced, using low-emissions sources or technologies if it is generated, or produced, by plant which relies wholly or mainly on a source of energy or a technology mentioned in section 26(2) of the Climate Change and Sustainable Energy Act 2006.
- (8) For the purposes of subsection (6) “generating station” and “supplying” are to be read in accordance with section 64(1) of the Electricity Act 1989.
- (9) “Energy” (except in this section), “energy bill”, “occupier”, “owner” and “relevant energy supplier” have the meaning given in regulations made by the Secretary of State.
- (10) Regulations under subsection (9) may also make provision as to the circumstances in which a person who is not a bill payer for the purposes of this Chapter may be treated as a bill payer for those purposes.

#### Commencement Information

**I2** S. 2 in force at 21.3.2012 for specified purposes by [S.I. 2012/873](#), [art. 3\(1\)\(a\)\(2\)](#)

### 3 Framework regulations

- (1) The Secretary of State must by regulations establish a scheme making provision for the Secretary of State—
  - (a) to authorise persons to act as green deal assessors, green deal providers or green deal installers in connection with green deal plans (either individually or through membership of a body specified in, or authorised under, the scheme);
  - (b) to regulate the conduct of those assessors, providers or installers (“green deal participants”).
- (2) Regulations under subsection (1) are referred to in this Chapter as “the framework regulations”.
- (3) The scheme established by the framework regulations may, in particular, make provision—
  - (a) requiring the payment of a fee in connection with initial or continued authorisation under the scheme;
  - (b) for the establishment and maintenance of a register of green deal participants and of persons from whom authorisation under the scheme has been withdrawn;
  - (c) requiring green deal participants to provide the information required under the scheme;
  - (d) for the issuing, revision or revocation of a code of practice;
  - (e) requiring green deal participants to comply with the code of practice as a condition of their authorisation;
  - (f) requiring green deal providers to enter into an agreement with the holder of a licence under section 7 or 7A of the Gas Act 1986 (gas transporter, shipper or supply licences) or section 6(1)(c) or (d) of the Electricity Act 1989 (electricity distributor and supply licences) and to comply with that agreement as a condition of their authorisation;
  - (g) requiring that an agreement mentioned in paragraph (f) be approved by the Secretary of State before being entered into;

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- (h) for securing compliance with any condition or any other requirement of the scheme, code or agreement;
  - (i) as to the consequences of non-compliance with any such condition or requirement.
- (4) The code of practice issued for the purposes of the scheme may, in particular, make provision—
  - (a) as to the qualification and training of green deal participants;
  - (b) as to their handling of queries or complaints;
  - (c) requiring green deal participants to have such arrangements for insurance as are specified in the code;
  - (d) as to the payment of green deal assessors by green deal providers or green deal installers and the payment of green deal installers by green deal providers;
  - (e) as to the circumstances in which green deal assessors may charge customers for qualifying assessments of properties and as to the amount of any such charge;
  - (f) requiring green deal assessors to act with impartiality;
  - (g) as to the provision of information by green deal providers to improvers and bill payers and prospective improvers and bill payers;
  - (h) as to marketing in connection with green deal plans.
- (5) The code may include provision for regulating a body specified or authorised for the purposes of subsection (1)(a).
- (6) The scheme and the code may make different provision for different circumstances or cases or for different purposes.
- (7) The provision made by the scheme or code in relation to green deal participants may also extend to matters in connection with any energy plans which are not green deal plans.
- (8) The provision made for the purposes of subsection (3)(h) or (i) may, in particular, include provision enabling the Secretary of State to—
  - (a) cancel any liability to pay for a qualifying assessment of a property;
  - (b) require a green deal provider to suspend or cancel the liability of a bill payer to make payments under a green deal plan;
  - (c) require a green deal participant to rectify a qualifying energy improvement or its installation;
  - (d) require a green deal participant to pay compensation or a financial penalty;
  - (e) withdraw, or require a body specified or authorised for the purposes of subsection (1)(a) to withdraw, an authorisation to act as a green deal participant;
  - (f) withdraw authorisation from a body authorised for the purposes of subsection (1)(a) as a body whose members are authorised to act as green deal participants.
- (9) For the purposes of this section references to a qualifying assessment are to an energy efficiency assessment which meets the requirements specified in the framework regulations and deals with such other matters as may be so specified.

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- (10) This section is without prejudice to the powers conferred on the Secretary of State by other provisions of this Chapter to make provision in or under the framework regulations.
- (11) In this Chapter references to a code of practice include references to a code of practice which has been revised by virtue of subsection (3)(d).

#### Commencement Information

**I3** S. 3 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(i)

### *Green deal plan*

#### 4 Assessment of property etc

- (1) For the purposes of section 1(4)(c) the conditions as to assessment of the property and other matters are—
- (a) the conditions set out in subsections (2) to (9), and
  - (b) such other conditions (whether relating to the green deal assessor, the green deal provider, the improver or any other person) as are specified in the framework regulations.
- (2) The first condition is that a qualifying assessment of the property has been carried out by a person authorised by virtue of the framework regulations to act as a green deal assessor.
- (3) The second condition is that the green deal assessor has recommended the energy efficiency improvements.
- (4) The third condition is that the green deal provider has given an estimate, on the basis specified in the framework regulations, of the savings likely to be made on the energy bills for the property if the improvements are carried out.
- (5) The fourth condition is that the green deal provider has given an estimate, on the basis specified in the framework regulations, of the period over which the savings mentioned in subsection (4) are likely to be made.
- (6) The fifth condition is that the green deal provider is authorised by virtue of the framework regulations to act as a green deal provider.
- (7) The sixth condition is that the green deal provider has offered to carry out the improvements on the basis that the whole or part of the cost will be repaid in instalments over a period after the improvements have been made.
- (8) The seventh condition is that the green deal provider meets any requirement specified in the framework regulations as to the relationship between—
- (a) the estimated total of the proposed instalments, and
  - (b) the estimate mentioned in subsection (4).
- (9) The eighth condition is that the green deal provider meets any requirement specified in the framework regulations as to the relationship between—
- (a) the period for which the instalments are proposed to be paid, and
  - (b) the period estimated under subsection (5).

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- (10) In subsection (2) the reference to a qualifying assessment is to be read in accordance with section 3(9).

**Commencement Information**

**I4** S. 4 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(b)(2)

## 5 Terms of plan etc

- (1) For the purposes of section 1(4)(d), the conditions as to the terms of the plan and other matters are—
- (a) the conditions set out in subsections (2) to (4), and
  - (b) such other conditions as are specified in the framework regulations.
- (2) The first condition is that the plan includes the following terms—
- (a) a term in which the improver agrees to—
    - (i) the amounts of the payments in instalments and the intervals at which, and period for which, they are payable;
    - (ii) such other matters as are specified in the regulations;
  - (b) a term in which the improver confirms that any necessary permissions or consents have been obtained in respect of the improvements;
  - (c) a term providing that the green deal provider may not take a charge over any person's property by way of security for payments;
  - (d) a term providing that the green deal plan does not prevent the bill payer from changing the intervals at which energy bills are to be paid.
- (3) The second condition is that the plan does not include any of the following terms—
- (a) a term making a person liable to make any payments under the green deal plan otherwise than in respect of the period for which the person is the bill payer in relation to the property;
  - (b) a term requiring the bill payer to make in any circumstances an early repayment of the whole or part of the amount outstanding under the green deal plan (except in accordance with the framework regulations or regulations under section 34, or provision made under them);
  - (c) a term providing for money to be advanced to the improver (except in accordance with the framework regulations or provision made under them).
- (4) The third condition is that the agreements mentioned in paragraph (a) of subsection (2) and the permissions and consents mentioned in paragraph (b) of that subsection have not been withdrawn before the end of the period of 14 days beginning with the last day on which they were given.
- (5) The conditions which may be specified in the framework regulations by virtue of subsection (1)(b) include, in particular—
- (a) a condition that the plan includes a term so specified enabling the early repayment of the whole or part of the amount outstanding under the plan and making provision as to the calculation of the amount payable and any fee,
  - (b) a condition that the plan includes a term so specified guaranteeing the improvements and making provision as to who is to benefit from the guarantee,

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- (c) a condition that the plan includes a term so specified as to how any problems with the improvements installed, or arising in connection with the installation of them, are to be dealt with, and
  - (d) a condition requiring the agreements mentioned in subsection (2)(a) to be in the form specified in the framework regulations.
- (6) References in this section to the agreements mentioned in subsection (2)(a) include references to the consent required by virtue of section 6(2)(a).

**Commencement Information**

**I5** S. 5 in force at 21.3.2012 for specified purposes by [S.I. 2012/873](#), [art. 3\(1\)\(b\)\(2\)](#)

**6 Consents and redress etc**

- (1) The framework regulations may make provision for dealing with cases where—
- (a) at the time when a plan is entered into the improver and the bill payer are different persons;
  - (b) the bill payer at the time when a plan is entered into is a different person from the bill payer at any subsequent time (a “subsequent bill payer”).
- (2) Provision which may be made by virtue of subsection (1) includes—
- (a) provision requiring the term included in the plan by virtue of section 5(2)(a)(i) to be one to which the bill payer mentioned in subsection (1)(a) has consented, and
  - (b) provision as to the terms of the plan which are to bind or benefit that bill payer or a subsequent bill payer.
- (3) Subsection (1) is subject to section 1(6).
- (4) The framework regulations may make provision for the purpose of providing redress in cases where a permission or consent mentioned in section 5(2)(b) was not obtained or was improperly obtained.
- (5) Provision included in framework regulations by virtue of subsection (4) may, in particular, enable the Secretary of State to—
- (a) require a green deal provider to suspend or cancel the liability of a bill payer to make payments under a green deal plan;
  - (b) require a green deal provider to refund any such payments that have already been made;
  - (c) require an improver to pay compensation to the green deal provider in respect of the suspension, cancellation or refund.

**Commencement Information**

**I6** S. 6 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(a\)\(ii\)](#)

**7 Installation of improvements**

- (1) For the purposes of section 1(5)(a) improvements are installed in accordance with this section if the following three conditions are met.



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- (2) The first condition is that the person carrying out the installation of the improvements is authorised by virtue of the framework regulations to act as a green deal installer.
- (3) The second condition is that any product installed in making the improvements—
  - (a) meets the standard specified in the code of practice in relation to the product or description of product, or
  - (b) is listed in a document which—
    - (i) is issued by the Secretary of State or a person authorised by the Secretary of State in connection with the code, and
    - (ii) is referred to in the code as listing the products which are to be taken as meeting the required standard.
- (4) In specifying the standard in relation to a product or description of product for the purposes of subsection (3)(a), the code of practice may make provision as to the testing and certification of the product or description of product.
- (5) The third condition is that the carrying out of the installation meets the standard specified in the code of practice.
- (6) In this section references to the code of practice are to the code of practice issued for the purposes of the scheme under the framework regulations.

#### Commencement Information

**17** S. 7 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(b)(2)

## 8 Confirmation of plan

- (1) For the purposes of section 1(5)(b) an arrangement is confirmed in accordance with this section if the following two conditions are met.
- (2) The first condition is that the relevant energy supplier notifies the bill payer—
  - (a) that payments for the energy efficiency improvements to the property are to be included in the energy bills for the property from the date specified in the notification, and
  - (b) of the amounts of those payments and the period for which they are to be made.
- (3) The date mentioned in subsection (2)(a) must not fall earlier than the end of the period specified in the framework regulations.
- (4) The second condition is that, as soon as practicable after the improvements have been installed, the green deal provider takes one or more of the following actions as required by the framework regulations in the circumstances—
  - (a) producing a document containing such information in connection with the plan as is specified in the regulations in the form so specified,
  - (b) securing that a document of a description specified in the regulations is produced, or
  - (c) securing that a document of such a description is updated.
- (5) The reference in this section to securing that a document is updated includes a reference to securing that a document is replaced by a document of the same description.

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(6) Sections 9 and 10 make further provision in relation to the second condition.

**Commencement Information**

**I8** S. 8 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(b)(2)

**9 Confirmation of plan: supplementary provision for England and Wales**

- (1) Subsection (2) applies if, by virtue of section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2007 Regulations or the 2010 Regulations.
- (2) The Secretary of State may by regulations make provision amending the 2007 Regulations or the 2010 Regulations or both (as the case may require) in connection with a document required to be produced or updated by virtue of section 8(4)(b) or (c).
- (3) The amendments made by virtue of subsection (2) may, in particular, include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.
- (4) In this section—
  - “the 2007 Regulations” means the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991);
  - “the 2010 Regulations” means the Building Regulations 2010 (S.I. 2010/2214).

**Commencement Information**

**I9** S. 9 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(b)(2)

**10 Confirmation of plan: supplementary provision for Scotland**

- (1) Subsection (2) applies if, by virtue of section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2008 Regulations.
- (2) The Scottish Ministers may by regulations make provision amending the 2008 Regulations in connection with a document required to be produced or updated by virtue of section 8(4)(b) or (c).
- (3) The amendments made by virtue of subsection (2) may, in particular, include amendments for the purpose of requiring a document to contain additional or updated information in connection with the plan or the improvements installed under the plan.
- (4) In this section “the 2008 Regulations” means the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309).

**Commencement Information**

**I10** S. 10 in force at 22.6.2012 by S.S.I. 2012/191, art. 2(1)(2)(a)

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## 11 Updating information produced under section 8

- (1) The framework regulations may make provision as to the circumstances in which a document produced for the purposes of section 8(4)(a) is required to be updated in accordance with the regulations.
- (2) Subsection (6) applies if one or more of the first, second or third conditions is met.
- (3) The first condition is that—
  - (a) by virtue of section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2007 Regulations or the 2010 Regulations, and
  - (b) provision is made in the 2007 Regulations or the 2010 Regulations or both by virtue of section 9(3) to require a document of that description to contain additional or updated information.
- (4) The second condition is that—
  - (a) by virtue of section 8(4)(b) or (c), the framework regulations specify a document of a description which is required to be produced under the 2008 Regulations, and
  - (b) provision is made in the 2008 Regulations by virtue of section 10(3) to require a document of that description to contain additional or updated information.
- (5) The third condition is that, by virtue of section 8(4)(b) or (c), the framework regulations specify a document of a description other than one falling within subsection (3) or (4).
- (6) The framework regulations may make provision as to the circumstances in which a document of a description falling within subsection (3), (4) or (5) (as the case may require) is required to be updated or further updated in accordance with provision made by the Secretary of State in the regulations.
- (7) In subsection (3) “the 2007 Regulations” and “the 2010 Regulations” have the same meaning as in section 9.
- (8) In subsection (4) “the 2008 Regulations” has the same meaning as in section 10.
- (9) In this section references to a document being required to be updated or further updated include references to a document being required to be replaced by a document of the same description.

### Commencement Information

**III** S. 11 in force at 21.3.2012 for specified purposes by [S.I. 2012/873](#), [art. 3\(1\)\(b\)\(2\)](#)

*Disclosure of green deal plan etc*

## 12 Disclosure of green deal plan etc in connection with sale or letting out

- (1) This section applies where—
  - (a) a green deal property, or a lease of such a property, is to be sold, or
  - (b) a green deal property is to be let out—
    - (i) under a tenancy or licence agreement, and

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- (ii) on the basis that the prospective tenant or licensee is to be liable for paying the energy bills for the property.
- (2) The seller or prospective landlord or licensor must, in relation to the document, or each document, required to be produced or updated as mentioned in section 8(4)—
  - (a) obtain the document or, if the requirement to produce or update the document has not yet been complied with, produce a document containing the same information in connection with the green deal plan as that document would have contained, and
  - (b) provide the document free of charge to any prospective buyer, tenant or licensee at the specified time.
- (3) An obligation under subsection (2) may be discharged by an agent.
- (4) For the purposes of subsection (2) a person becomes a prospective buyer, tenant or licensee in relation to a property when the person—
  - (a) requests any information about the property from the seller, prospective landlord or licensor or an agent for the purpose of deciding whether to buy or let the property,
  - (b) makes a request to view the property for the purpose mentioned in paragraph (a), or
  - (c) makes an offer, whether oral or written, to buy or let the property.
- (5) For the purposes of this section—
  - (a) an agent is a person acting on behalf of a seller or prospective landlord or licensor in the sale or letting out of a property;
  - (b) a property is a green deal property if there is a green deal plan in respect of the property and payments are still to be made under that plan;
  - (c) specified, in relation to a time, means specified in regulations made by the Secretary of State.
- (6) The Secretary of State may make regulations specifying cases or circumstances in which subsection (2) does not apply.

#### **Commencement Information**

**I12** S. 12 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(c)(2)

### **13 Disclosure of green deal plan in connection with other transactions etc**

- (1) This section applies where—
  - (a) there is to be a transaction or other arrangement in respect of a green deal property (not falling within section 12(1)), and
  - (b) the transaction or arrangement is of a description specified in regulations made by the Secretary of State.
- (2) The regulations may require a person of a description specified in the regulations to—
  - (a) obtain a document required to be produced or updated as mentioned in section 8(4) or, if the requirement to produce or update such a document has not yet been complied with, produce a document containing the same information in connection with the green deal plan as that document would have contained, and

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- (b) provide the document free of charge to a person of a description specified in the regulations at the time so specified.
- (3) The regulations may provide for an obligation imposed on a person by virtue of subsection (2) to be discharged by a person acting on the person's behalf.
- (4) In this section the reference to a green deal property is to be read in accordance with section 12(5)(b).

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**Commencement Information**

**I13** S. 13 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(c)(2)

## 14 Acknowledgment of green deal plan on sale or letting out

- (1) This section applies where—
  - (a) a green deal property, or a lease of such a property, is to be sold, or
  - (b) a green deal property is to be let out—
    - (i) under a tenancy or licence agreement which is in writing, and
    - (ii) on the basis that the prospective tenant or licensee is to be liable for paying the energy bills for the property.
- (2) The seller or prospective landlord or licensor must secure that the contract for sale or tenancy or licence agreement includes an acknowledgment by the buyer, tenant or licensee that the bill payer at the property is liable to make payments under the green deal plan and that certain terms of that plan are binding on the bill payer.
- (3) Subsections (4) and (5) apply where the green deal property is in England or Wales.
- (4) An acknowledgment required by subsection (2) must be in the form prescribed in regulations made by the Secretary of State.
- (5) The Secretary of State may make regulations specifying cases or circumstances in which subsection (2) does not apply.
- (6) Subsections (7) and (8) apply where the green deal property is in Scotland.
- (7) The acknowledgment required by subsection (2) must be in the form prescribed in regulations made by the Scottish Ministers.
- (8) The Scottish Ministers may make regulations specifying cases or circumstances in which subsection (2) does not apply.
- (9) In this section references to a green deal property are to be read in accordance with section 12(5)(b).

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**Commencement Information**

**I14** S. 14(1)-(5)(9) in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(c)(2)

**I15** S. 14(6)-(8) in force at 22.6.2012 by S.S.I. 2012/191, art. 2(1)(2)(b)

*Status: Point in time view as at 01/01/2013. This version of this Act contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)*

## 15 Acknowledgment of green deal plan in connection with other transactions etc

- (1) This section applies where—
  - (a) there is to be a transaction or other arrangement in respect of a green deal property (not falling within section 14(1)), and
  - (b) the transaction or arrangement is of a description specified in regulations made under this subsection by the Secretary of State.
- (2) Regulations under subsection (1) may require a person of a description specified in the regulations to secure, at a time and in a document so specified, that an acknowledgment is made by a person of a description so specified that—
  - (a) the bill payer at the property is liable to make payments under the green deal plan, and
  - (b) certain terms of that plan are binding on the bill payer.
- (3) Where the green deal property is in England or Wales, regulations made by the Secretary of State under this subsection may provide for any acknowledgment required by virtue of subsection (2) to be in the form prescribed in the regulations under this subsection.
- (4) Where the green deal property is in Scotland, regulations made by the Scottish Ministers under this subsection may provide for any acknowledgment required by virtue of subsection (2) to be in the form prescribed in the regulations under this subsection.
- (5) In this section references to a green deal property are to be read in accordance with section 12(5)(b).

### Commencement Information

**I16** S. 15(1)-(3) (5) in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(a\)\(iii\)](#)

**I17** S. 15(4) in force at 22.6.2012 by [S.S.I. 2012/191](#), [art. 2\(1\)\(2\)\(c\)](#)

## 16 Sanctions for non-compliance with obligations under sections 12 to 15

- (1) The Secretary of State may make regulations—
  - (a) for the purpose of securing compliance with the obligations set out in section 12 or 14 or imposed by virtue of regulations under section 13 or 15;
  - (b) as to the consequences of non-compliance with the obligations.
- (2) The regulations may, in particular, include provision—
  - (a) as to sanctions for non-compliance with the obligations (including the imposition of a civil penalty);
  - (b) enabling the Secretary of State to require a green deal provider to suspend or cancel the liability of a bill payer to make payments under a green deal plan;
  - (c) enabling the Secretary of State to require a green deal provider to refund any such payments that have already been made;
  - (d) enabling the Secretary of State to require a seller, a prospective landlord or licensor or another person to pay compensation to a green deal provider in respect of any such suspension, cancellation or refund.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

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**Commencement Information**

**I18** S. 16 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(iv)

*Modifying energy licences*

**17 Power to modify energy licences in connection with green deal payments**

- (1) The Secretary of State may modify—
- (a) a condition of a particular licence under section 7 or 7A of the Gas Act 1986 (gas transporter, shipper and 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)(c) or (d) of the Electricity Act 1989 (electricity distribution and supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (e) a document maintained in accordance with the conditions of licences under section 7 or 7A of the Gas Act 1986 or section 6(1)(c) or (d) of the Electricity Act 1989 or an agreement that gives effect to a document so maintained.
- (2) The power under subsection (1) may be exercised for the following purposes only—
- (a) in so far as the power relates to a licence under section 7 of the Gas Act 1986 or section 6(1)(c) of the Electricity Act 1989, the purpose of preventing the holder of the licence from permanently disconnecting the supply of gas or electricity to a green deal property, and
  - (b) in so far as the power relates to any licence, the purpose of requiring or enabling the holder of the licence to take, or not to take, specified action in connection with green deal payments.
- (3) The provision which may be made by virtue of subsection (2)(b) includes, in particular—
- (a) if the holder of the licence is of a specified description, provision enabling the holder to opt into or opt out of any provision made by virtue of paragraphs (b) to (f),
  - (b) provision requiring the holder of the licence to collect green deal payments through energy bills and remit them to a green deal provider,
  - (c) provision as to the circumstances in which the holder of the licence is required to make payments to a green deal provider by reference to green deal payments which are due but which have not been made,
  - (d) provision in connection with the cancellation or suspension of green deal payments,
  - (e) provision requiring or enabling the holder of the licence to make specified arrangements for facilitating the collection of green deal payments, and
  - (f) provision requiring or enabling payments to be made by or to the holder of the licence in respect of functions discharged in connection with green deal payments.
- (4) Provision made by virtue of subsection (2)(b) which falls within subsection (3)(c) may include provision requiring the holder of the licence, where a bill payer has failed to



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pay a sum due under an energy bill, to remit a proportion of any payment received to a green deal provider.

- (5) Conditions included in a licence under section 7 or 7A of the Gas Act 1986 by virtue of the power under subsection (1) may do any of the things authorised by section 7B(5)(a)(i) or (iii) of that Act (which applies to the power of the Gas and Electricity Markets Authority with respect to licence conditions under section 7B(4)(a)).
- (6) Conditions included in a licence under section 6(1)(c) or (d) of the Electricity Act 1989 by virtue of the power under subsection (1) may do any of the things authorised by section 7(3)(a) or (c) or (4) of that Act (which applies to the power of the Gas and Electricity Markets Authority with respect to licence conditions under section 7(1)(a)).
- (7) For the purposes of this section—
  - (a) payments are green deal payments if they are made under a green deal plan,
  - (b) a property is a green deal property if there is a green deal plan in respect of the property and payments are still to be made under that plan, and
  - (c) references to a green deal provider include references to a person acting on behalf of a green deal provider or nominated by a green deal provider.

#### **Commencement Information**

**I19** S. 17 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

## **18 Power to modify energy supply licences to make provision as to default in green deal payments**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (gas 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 (electricity supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (e) a document maintained in accordance with the conditions of licences under section 7A(1) of the Gas Act 1986 or section 6(1)(d) of the Electricity Act 1989 or an agreement that gives effect to a document so maintained.
- (2) The power under subsection (1) may be exercised for the purpose only of making provision—
  - (a) as to the steps which are to be taken by the holder of a licence following a bill payer's default in making green deal payments to the holder of the licence,
  - (b) as to the circumstances in which the holder of a licence may disconnect the supply to a green deal property following such a default, or
  - (c) enabling, in specified circumstances, the holder of a licence to require from a bill payer a deposit by way of security for green deal payments to be made by the bill payer.
- (3) For the purposes of this section “green deal payments” and “green deal property” are to be read in accordance with section 17(7).



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#### Commencement Information

**I20** S. 18 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

### 19 Power to modify energy supply licences to require provision of information

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (gas 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 (electricity supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (e) a document maintained in accordance with the conditions of licences under section 7A(1) of the Gas Act 1986 or section 6(1)(d) of the Electricity Act 1989 or an agreement that gives effect to a document so maintained.
- (2) The power under subsection (1) may be exercised for one or both of the following two purposes only.
- (3) The first purpose is the purpose of requiring, at specified times, the holder of the licence to provide bill payers with specified information in connection with their green deal plans.
- (4) The second purpose is the purpose of requiring the holder of the licence to disclose on request specified information about the payment of energy bills by a person who is, or is to be, the bill payer for a property in respect of which there is, or is proposed to be, a green deal plan.
- (5) The only persons to whom the licence holder may be required to disclose information by virtue of subsection (4) are—
  - (a) where there is a green deal plan, the green deal provider under the plan;
  - (b) where there is proposed to be a green deal plan, a person who is authorised under the framework regulations to act as a green deal provider.
- (6) The licence holder may be required to disclose the information requested only where—
  - (a) the green deal provider or authorised person states that the request is made for purposes connected with the green deal plan or proposed green deal plan,
  - (b) the green deal provider or authorised person provides evidence that the bill payer has consented to—
    - (i) disclosure of the information to that provider or person for those purposes, and
    - (ii) onward disclosure of the disclosed information to and by other persons for those purposes,
  - (c) the information relates to a time within the 5 years immediately preceding the request, and
  - (d) the licence holder has the information.

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- (7) The power under subsection (1) may be exercised so as to require information to be provided in a specified manner or form, or subject to specified requirements or restrictions.
- (8) Conditions included in a licence under section 7A(1) of the Gas Act 1986 by virtue of the power under subsection (1) and the purpose mentioned in subsection (4) may do any of the things authorised by section 7B(5)(a)(i) or (iii) of that Act (which applies to the power of the Gas and Electricity Markets Authority with respect to licence conditions under section 7B(4)(a)).
- (9) Conditions included in a licence under section 6(1)(d) of the Electricity Act 1989 by virtue of the power under subsection (1) and the purpose mentioned in subsection (4) may do any of the things authorised by section 7(3)(a) or (c) or (4) of that Act (which applies to the power of the Gas and Electricity Markets Authority with respect to licence conditions under section 7(1)(a)).

#### **Commencement Information**

**I21** S. 19 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

## **20 Power to modify energy supply licences to make provision as to consumer protection**

- (1) The Secretary of State may modify—
  - (a) a condition of a particular licence under section 7A(1) of the Gas Act 1986 (gas 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 (electricity supply licences);
  - (d) the standard conditions incorporated in licences under that provision by virtue of section 8A of that Act;
  - (e) a document maintained in accordance with the conditions of licences under section 7A(1) of the Gas Act 1986 or section 6(1)(d) of the Electricity Act 1989 or an agreement that gives effect to a document so maintained.
- (2) The power under subsection (1) may be exercised for the purpose only of making provision corresponding to that made by the disappplied consumer protection legislation.
- (3) Conditions included in a licence under section 6(1)(d) of the Electricity Act 1989 by virtue of the power under subsection (1) may do any of the things authorised by section 7(4) of that Act (which applies to the power of the Gas and Electricity Markets Authority with respect to licence conditions under section 7(1)(a)).
- (4) For the purposes of subsection (2) provision corresponds to that made by the disappplied consumer protection legislation if it is made for the same purpose as the purpose for which that provision was made.
- (5) For the purposes of this section references to the disappplied consumer protection legislation are to the provisions of the Consumer Credit Act 1974 which would have applied if the amendment made by section 26 had not been made.

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**Commencement Information**

**I22** S. 20 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

**21 Powers under sections 17 to 20: consultation**

Before making a modification under any of sections 17 to 20, the Secretary of State must consult—

- (a) the holder of any licence being modified,
- (b) the Gas and Electricity Markets Authority, and
- (c) such other persons as the Secretary of State considers appropriate.

**Commencement Information**

**I23** S. 21 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

**22 Powers under sections 17 to 20: supplementary**

- (1) Subsections (2) to (6) apply in relation to the powers under sections 17 to 20.
- (2) The powers—
  - (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 or circumstances;
  - (c) include a power to make incidental, consequential or transitional modifications.
- (3) Provision included in a licence by virtue of any of the powers—
  - (a) need not relate to the activities authorised by the licence;
  - (b) may make different provision for different cases.
- (4) The Secretary of State must publish details of modifications under any of the powers as soon as reasonably practicable after the modifications are made.
- (5) A modification under any of the powers of part of a standard condition of a 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 Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (6) Where the Secretary of State makes modifications under any of the powers of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (7) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
  - (a) after paragraph (d) omit “or”;
  - (b) after paragraph (e) insert “or  
(f) under Chapter 1 of Part 1 of the Energy Act 2011.”
- (8) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences)—

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- (a) for “2008 or” substitute “ 2008, ”;
  - (b) after “2010” insert “ or under Chapter 1 of Part 1 of the Energy Act 2011 ”.
- (9) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers under sections 17 to 20 with respect to holders of licences under section 7 or 7A of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (10) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers under sections 17 to 20 with respect to holders of licences under section 6(1)(c) or (d) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

#### Commencement Information

**I24** S. 22 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(v)

VALID FROM 28/01/2013

### *Gas and electricity codes*

#### **23 Recovering green deal payments: gas suppliers**

- (1) Schedule 2B to the Gas Act 1986 (the gas code) is amended as follows.
- (2) In paragraph 6A(1) for paragraph (a) substitute—
- “(a) the sum is owed to an authorised supplier—
    - (i) in respect of the supply of gas to the premises on which the meter is installed,
    - (ii) in respect of the provision of the meter, or
    - (iii) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises; or”.
- (3) In paragraph 7(1) for paragraphs (a) and (b) substitute—
- “(a) a demand in writing is made by a gas supplier for any of the relevant payments to be made by a consumer; and
  - (b) the consumer does not make those payments within 28 days after the making of the demand.”
- (4) After paragraph 7(1) insert—
- “(1A) A payment is a relevant payment for the purposes of sub-paragraph (1) if it is due to the gas supplier from the consumer—
    - (a) in respect of the supply of gas to any premises of the consumer (in this paragraph referred to as “the premises”); or
    - (b) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises.”
- (5) In each of paragraphs 7(4)(b) and (5) for “charges” substitute “ payments ”.

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## **24 Recovering green deal payments: electricity suppliers**

- (1) The Electricity Act 1989 is amended as follows.
- (2) Paragraph 2 of Schedule 6 to the Electricity Act 1989 (the electricity code) is amended as set out in subsections (3) to (5).
- (3) In sub-paragraph (1) for the words from “paid” to “electricity meter” substitute “made all the relevant payments”.
- (4) After sub-paragraph (1) insert—
  - “(1A) A payment is a relevant payment for the purposes of sub-paragraph (1) if it is due from the customer to an electricity supplier—
    - (a) in respect of the supply of electricity to any premises or the provision of an electricity meter; or
    - (b) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises.”
- (5) In sub-paragraph (3) for “payment of the charges due” substitute “the relevant payments to be made”.
- (6) In paragraph 12(2) of Schedule 7 (recovery through pre-payment meters) for paragraph (a) substitute—
  - “(a) the sum is owed to an authorised supplier—
    - (i) in respect of the supply of electricity to the premises on which the meter is installed,
    - (ii) in respect of the provision of the meter, or
    - (iii) under a green deal plan (within the meaning of section 1 of the Energy Act 2011) in respect of the premises; or”.

### *Modifying consumer credit legislation*

VALID FROM 28/01/2013

## **25 Exemption from Consumer Credit Act 1974 in relation to credit to business debtors**

- (1) Section 16B of the Consumer Credit Act 1974 (exemption relating to businesses) is amended as follows.
- (2) After subsection (1) insert—
  - “(1A) This Act does not regulate a consumer credit agreement if—
    - (a) the credit provided by the creditor to the debtor by the agreement does not exceed £25,000,
    - (b) the agreement is entered into by the debtor wholly for the purposes of a business carried on, or intended to be carried on, by the debtor, and
    - (c) the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).”

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(3) In subsection (2) after “If an agreement” insert “ falling within subsection (1) ”.

(4) After subsection (3) insert—

“(3A) Subsections (2) and (3) also apply in relation to an agreement falling within subsection (1A) but with the omission of the words “or predominantly”.

VALID FROM 28/01/2013

## 26 Energy suppliers not to be treated as carrying on ancillary credit business

In section 21 of the Consumer Credit Act 1974 (businesses needing an OFT licence) after subsection (3) insert—

“(4) A relevant energy supplier acting in that capacity does not need a licence to carry on an ancillary credit business so far as it comprises or relates to debt-adjusting, debt-counselling, debt-collecting or debt administration in relation to debts due under a green deal plan associated with the supplier.

(5) A green deal plan is associated with a relevant energy supplier if the payments under the plan are to be made to the supplier.

(6) In this section—

- (a) “green deal plan” has the meaning given by section 1 of the Energy Act 2011; and
- (b) “relevant energy supplier” has the meaning given in regulations made for the purposes of section 2(9) of that Act.”

VALID FROM 28/01/2013

## 27 Duties to give debtors information and statements

(1) The Consumer Credit Act 1974 is amended as follows.

(2) In section 77 (duty to give information to debtor under fixed-sum credit agreement) after subsection (2) insert—

“(2A) Subsection (2B) applies if the regulated agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).

(2B) The duty imposed on the creditor by subsection (1) may be discharged by another person acting on the creditor's behalf.”

(3) In section 77A (statements to be provided in relation to fixed-sum credit agreement) after subsection (2) insert—

“(2A) Subsection (2B) applies if the regulated agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).

(2B) Any duty imposed on the creditor by this section may be discharged by another person acting on the creditor's behalf.”

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(4) In section 77B (statement of account to be provided on request in relation to fixed-sum credit agreement) after subsection (7) insert—

“(7A) Subsection (7B) applies if the regulated agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).

(7B) The duty imposed on the creditor by this section may be discharged by another person acting on the creditor's behalf.”

VALID FROM 28/01/2013

## 28 Exemption from requirement to give notice of sums in arrears

In section 86B of the Consumer Credit Act 1974 (requirement to give notice of sums in arrears) for subsection (12) substitute—

“(12) In this section “applicable agreement” means an agreement which falls within subsection (12A) or (12B).

(12A) An agreement falls within this subsection if—

- (a) it is a regulated agreement for fixed-sum credit; and
- (b) it is not—
  - (i) a non-commercial agreement;
  - (ii) a small agreement; or
  - (iii) a green deal plan (within the meaning of section 1 of the Energy Act 2011).

(12B) An agreement falls within this subsection if—

- (a) it is a regulated consumer hire agreement; and
- (b) it is neither a non-commercial agreement nor a small agreement.”

## 29 Early repayment of green deal finance

(1) The Consumer Credit Act 1974 is amended as follows.

(2) After section 95A (compensatory amount to creditor in relation to early repayment) insert—

### “95B Compensatory amount: green deal finance

(1) This section applies where—

- (a) a regulated consumer credit agreement provides for the rate of interest on the credit to be fixed for a period of time (“the fixed rate period”),
- (b) the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011) which is of a duration specified for the purposes of this section in regulations, and
- (c) under section 94 the debtor discharges all or part of his indebtedness during the fixed rate period.



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- (2) The creditor may claim an amount equal to the cost which the creditor has incurred as a result only of the debtor's indebtedness being discharged during the fixed rate period if—
- (a) the amount of the payment under section 94 is not paid from the proceeds of a contract of payment protection insurance, and
  - (b) such other conditions as may be specified for the purposes of this section in regulations are satisfied.
- (3) The amount in subsection (2)—
- (a) must be fair,
  - (b) must be objectively justified,
  - (c) must be calculated by the creditor in accordance with provision made for the purposes of this section in regulations, and
  - (d) must not exceed the total amount of interest that would have been paid by the debtor under the agreement in the period from the date on which the debtor makes the payment under section 94 to the date fixed by the agreement for the discharge of the indebtedness of the debtor.
- (4) If a creditor could claim under either section 95A or this section, the creditor may choose under which section to claim.”
- (3) In section 94 (right to complete payments ahead of time)—
- (a) in subsection (1) after “section 95A(2)” insert “ or section 95B(2) ”;
  - (b) in subsection (5) after “section 95A(2)” insert “ or section 95B(2) ”.
- (4) In subsection (2)(c) of section 97A (duty to give information on partial repayment) after “section 95A(2)” insert “ or section 95B(2) ”.

**Commencement Information**

**I25** S. 29 in force at 21.3.2012 for specified purposes by S.I. 2012/873, art. 3(1)(d)(2)

**30 Power to amend Consumer Credit Act 1974**

- (1) The Secretary of State may by order make such amendments to the Consumer Credit Act 1974 as the Secretary of State considers appropriate in consequence of provision made by or under this Chapter.
- (2) Before exercising the power under subsection (1) the Secretary of State must consult—
- (a) the Office of Fair Trading, and
  - (b) such other persons as the Secretary of State considers appropriate.

**Commencement Information**

**I26** S. 30 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(vi)



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### *Delegation and exercise of functions*

#### **31 Delegation and conferring of functions**

- (1) The Secretary of State may by order provide for the following functions conferred on the Secretary of State to be exercisable instead by a public body specified in the order—
  - (a) any function exercisable in connection with the scheme established by the framework regulations;
  - (b) any function exercisable under the framework regulations by virtue of section 6(4);
  - (c) any function under regulations made under section 16.
- (2) If the function of issuing a code of practice for the purposes of the scheme is specified in an order by virtue of subsection (1)(a), a draft of the code must be approved by the Secretary of State before the Secretary of State lays the draft before Parliament under section 39(2).
- (3) If the function of revoking a code of practice issued for the purposes of the scheme is specified in an order by virtue of subsection (1)(a), the code must not be revoked without the approval of the Secretary of State.
- (4) The Secretary of State may by order make provision conferring administration functions on—
  - (a) the Secretary of State;
  - (b) a public body specified in the order.
- (5) For the purposes of subsection (4) administration functions are functions in connection with the administration of any provision in licences under section 7 or 7A of the Gas Act 1986 or section 6(1)(c) or (d) of the Electricity Act 1989 made by virtue of section 17(3) of this Act.
- (6) An order made by virtue of subsection (1) or (4)(b) may provide for—
  - (a) different functions to be exercisable by different public bodies;
  - (b) the same function to be exercisable by different public bodies in relation to different areas.
- (7) The Secretary of State may make payments to any public body specified in an order made by virtue of subsection (1).

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#### **Commencement Information**

**127** S. 31 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(vii)

#### **32 Exercise of scheme functions on behalf of the Secretary of State or a public body**

- (1) This section applies to any function exercisable in connection with the scheme established by the framework regulations.
- (2) The Secretary of State may arrange for such a function to be exercised by any body or person on behalf of the Secretary of State.

*Status:* Point in time view as at 01/01/2013. This version of this Act contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

- (3) A public body specified in relation to such a function in an order made by virtue of section 31(1)(a) may arrange for the function to be exercised by any other body or person on its behalf.
- (4) Arrangements under this section—
  - (a) do not affect the responsibility for the exercise of the function;
  - (b) may include provision for payments to be made to the body or person exercising the function under the arrangements.

**Commencement Information**

**I28** S. 32 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(viii)

**33 Duty to report**

- (1) This section applies if the function under section 3(1)(a) is specified in an order made by virtue of section 31(1)(a).
- (2) The Secretary of State may make regulations requiring the body specified in relation to that function in the order to—
  - (a) collect information on the specified matters, and
  - (b) provide the Secretary of State with a report on those matters at the specified times.
- (3) In subsection (2) “specified” means specified in the regulations.

**Commencement Information**

**I29** S. 33 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(ix)

*General*

**34 Power of Secretary of State to deal with special circumstances**

- (1) The Secretary of State may by regulations make provision as to—
  - (a) the circumstances in which a bill payer's liability to make green deal payments to the relevant energy supplier is suspended or cancelled;
  - (b) the circumstances in which any suspension of liability ends;
  - (c) the consequences of any suspension or cancellation;
  - (d) the circumstances in which the green deal provider may require the early repayment of the whole or part of the total of the payments outstanding under a green deal plan.
- (2) The regulations may, in particular, include provision—
  - (a) as to the procedure to be followed for securing a suspension or cancellation (including the payment of an administration fee calculated in accordance with the regulations);
  - (b) as to how any payments due under a green deal plan during a period of suspension are to be paid;

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- (c) as to the making of payments due under a green deal plan after a period of suspension;
  - (d) as to the calculation of the amount payable on early repayment (including a fee calculated in accordance with the regulations).
- (3) For the purposes of this section—
- (a) “bill payer” includes the person who would be the bill payer if the supply from the relevant energy supplier were not temporarily disconnected or the liability to make green deal payments were not suspended, and
  - (b) payments are green deal payments if they are made under a green deal plan.

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**Commencement Information**

**I30** S. 34 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(x)

## 35 Appeals

- (1) This section applies if provision is included in a scheme or regulations by virtue of any of the following—
- (a) section 3(3)(h) or (i);
  - (b) section 6(4);
  - (c) section 16.
- (2) The Secretary of State must by regulations provide for a right of appeal to a court or tribunal against any sanction imposed, or other action taken, by the Secretary of State or a specified public body under the provision mentioned in subsection (1).
- (3) Regulations under subsection (2) may, in particular, include provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the persons who may make an appeal;
  - (c) as to the grounds on which an appeal may be made;
  - (d) as to the procedure for making an appeal (including any fee which may be payable);
  - (e) suspending the effect of a sanction or other action being appealed against, pending determination of the appeal;
  - (f) as to the powers of the court or tribunal to which an appeal is made;
  - (g) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (4) The provision referred to in subsection (3)(f) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the sanction imposed or action taken;
  - (b) to withdraw the sanction or action;
  - (c) to impose a different sanction or take different action;
  - (d) to remit the decision whether to confirm the sanction or other action, or any matter relating to that decision, to the person who imposed the sanction or took the action;
  - (e) to award costs or, in Scotland, expenses.

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- (5) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (3)(a), (d), (f) or (g), regulations under subsection (2) may revoke or amend any subordinate legislation.
- (6) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within subsection (3)(a), (d), (f) or (g), they may by regulations revoke or amend any subordinate legislation, or any provision included in an instrument made under an Act of the Scottish Parliament, if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (7) In this section—
- (a) “specified public body” means a public body specified in an order made by virtue of section 31(1);
  - (b) “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

#### Commencement Information

**I31** S. 35(1)-(5)(7) in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xi)

**I32** S. 35(6) in force at 22.6.2012 by S.S.I. 2012/191, art. 2(1)(2)(d)

### 36 Funding for energy efficiency advice

- (1) The Secretary of State may incur expenditure in providing qualifying advice or information or in making payments to persons who provide qualifying advice or information.
- (2) In this section “qualifying advice or information” means advice or information about green deal plans or energy efficiency generally which is given to individuals or organisations.

#### Commencement Information

**I33** S. 36 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xii)

### 37 Preparatory expenditure: framework regulations

The Secretary of State may, before the framework regulations are made, incur expenditure for the purpose of, or in connection with, preparing for a scheme of the kind provided for by section 3.

### 38 Green deal installation apprenticeships

- (1) Before making the first framework regulations the Secretary of State must lay before Parliament a report on what, if any, steps the Secretary of State has taken to encourage green deal installation apprenticeships.
- (2) A “green deal installation apprenticeship” is an apprenticeship which provides training on how to install energy efficiency improvements at properties.

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**Commencement Information**

**I34** S. 38 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xiii)

**39 Parliamentary procedure in relation to code of practice**

- (1) This section makes further provision in relation to the issuing of any code of practice for the purposes of the scheme established by the framework regulations.
- (2) Before the code is issued the Secretary of State must lay a draft of the code before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the code may not be issued.
- (4) If no such resolution is made within that period, the code may be issued.
- (5) The “40-day period”, in relation to a draft of a code, 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—
  - (a) Parliament is dissolved or prorogued, or
  - (b) both Houses are adjourned for more than 4 days.

**Commencement Information**

**I35** S. 39 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xiv)

**40 Regulations and orders**

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes.
- (2) Regulations and orders under this Chapter, other than those made by the Scottish Ministers, are to be made by statutory instrument.
- (3) A statutory instrument containing regulations or an order under this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Subsection (3) does not apply to a statutory instrument containing—
  - (a) regulations under section 2 or the framework regulations,
  - (b) regulations under section 13, 15(1), 16, 34 or 35(2), or
  - (c) an order under section 1, 2 or 30.
- (5) A statutory instrument containing regulations or an order falling within subsection (4) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Regulations under section 10(2), 14(7) or (8) or 15(4) (regulations made by the Scottish Ministers) are subject to the negative procedure.

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- (7) Regulations under section 35(6) (regulations made by the Scottish Ministers) are subject to the affirmative procedure.
- (8) Before making regulations or an order under this Chapter extending to Scotland, the Secretary of State must—
  - (a) if the regulations or order contain any provision which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament, obtain the consent of the Scottish Ministers;
  - (b) in any other case, consult the Scottish Ministers.
- (9) The Secretary of State must obtain the consent of the Welsh Ministers before making provision under section 35 amending or revoking—
  - (a) provision included in an instrument made under a Measure or Act of the National Assembly for Wales;
  - (b) any other subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998).
- (10) Before amending under section 9 a provision of the Building Regulations 2010 (S.I. 2010/2214), the Secretary of State must, if and so far as the function under which the provision was made is exercisable by the Welsh Ministers, obtain their consent.
- (11) Subsections (9) and (10) do not apply to the extent that the Secretary of State is making incidental or consequential provision.
- (12) Before making regulations or an order under this Chapter applying to Wales, the Secretary of State must consult the Welsh Ministers.
- (13) Subsection (12) does not apply to the extent that consent has been obtained under subsection (9) or (10).

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**Commencement Information**

**I36** S. 40 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xv)

## **41 Crown application: Chapter 1**

This Chapter binds the Crown.

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**Commencement Information**

**I37** S. 41 in force at 21.3.2012 by S.I. 2012/873, art. 2(a)(xvi)

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VALID FROM 26/03/2015

## CHAPTER 2

### PRIVATE RENTED SECTOR: ENGLAND AND WALES

#### *Introductory*

#### **42 Meaning of “domestic PR property” and “non-domestic PR property”: England and Wales**

- (1) For the purposes of this Chapter—
- (a) a property is a “domestic private rented property” if, subject to subsection (2), it is let—
    - (i) under a tenancy which is an assured tenancy for the purposes of the Housing Act 1988,
    - (ii) under a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977, or
    - (iii) under a tenancy which is specified for the purposes of this subsection in an order made by the Secretary of State;
  - (b) a property is a “non-domestic private rented property” if it—
    - (i) is situated in England and Wales,
    - (ii) is let under a tenancy, and
    - (iii) is not a dwelling.
- (2) But a property is not a domestic private rented property if—
- (a) it is low cost rental accommodation within the meaning of section 69 of the Housing and Regeneration Act 2008 and the landlord is a private registered provider of social housing,
  - (b) it is low cost home ownership accommodation within the meaning of section 70 of that Act, or
  - (c) the landlord is a body registered as a social landlord under Chapter 1 of Part 1 of the Housing Act 1996.
- (3) In subsection (1)(b) “dwelling” has the meaning given by the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991) (“the Energy Performance Regulations”).
- (4) A domestic private rented property is referred to in this Chapter as a “domestic PR property”.
- (5) A non-domestic private rented property is referred to in this Chapter as a “non-domestic PR property”.

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### *Domestic energy efficiency regulations*

#### **43 Domestic energy efficiency regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a domestic PR property—
  - (a) which is of such description of domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
 may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “domestic energy efficiency regulations”.
- (4) For the purposes of domestic energy efficiency regulations—
 

“energy performance certificate” has the meaning given by the Energy Performance Regulations;

“landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);

“relevant energy efficiency improvements” means improvements which—

  - (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
    - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
    - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
    - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) The first domestic energy efficiency regulations must come into force no later than 1 April 2018.

#### **44 Further provision about domestic energy efficiency regulations**

- (1) Domestic energy efficiency regulations may, in particular, include provision about—
  - (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;



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- (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—
  - (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
  - (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **45 Sanctions for the purposes of domestic energy efficiency regulations**

- (1) Domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) for a local authority to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local authority.
- (3) The amount of any civil penalty provided for by domestic energy efficiency regulations must not exceed £5,000.
- (4) Where domestic energy efficiency regulations make provision for the imposition of a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (5) Provision falling within subsection (4) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—

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- (a) to confirm the penalty;
- (b) to withdraw the penalty;
- (c) to vary the amount of the penalty;
- (d) to award costs.

(7) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (5) (a), (c), (e) or (f), domestic energy efficiency regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.

(8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

### *Tenants' energy efficiency improvements regulations*

#### **46 Tenants' energy efficiency improvements regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a domestic PR property which is of such description of domestic PR property as is provided for by the regulations does not unreasonably refuse a request mentioned in subsection (2).
- (2) The request is one by the tenant of the property to consent to the making of such relevant energy efficiency improvements as are identified in the request.
- (3) Regulations under this section are referred to in this Chapter as “tenants' energy efficiency improvements regulations”.
- (4) For the purposes of tenants' energy efficiency improvements regulations—
  - “landlord” and “tenant” have the meaning given by the regulations;
  - “relevant energy efficiency improvements” means improvements which—
    - (a) are of such description as the regulations provide, and
    - (b) can be—
      - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
      - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
      - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
      - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) The first tenants' energy efficiency improvements regulations must come into force no later than 1 April 2016.

#### **47 Further provision about tenants' energy efficiency improvements regulations**

- (1) Tenants' energy efficiency improvements regulations may, in particular, include provision about—
  - (a) the form, content and service of a request under the regulations;

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- (b) the form, content and service of any response by the landlord to a request (including the period within which any response must be given);
  - (c) exemptions from any requirement imposed by or under the regulations;
  - (d) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(c) includes, in particular, provision about exemptions—
- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of consenting to the request.
- (3) Provision falling within subsection (1)(d) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements for which consent has been requested are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **48 Sanctions for the purposes of tenants' energy efficiency improvements regulations**

- (1) Tenants' energy efficiency improvements regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision for a tenant to apply to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by or under the regulations.
- (3) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the provision may, in particular, include provision—
- (a) as to the jurisdiction of the court or tribunal to which an application may be made;
  - (b) as to the grounds on which an application may be made;
  - (c) as to the procedure for making an application (including any fee which may be payable);
  - (d) as to the powers of the court or tribunal to which an application is made (including as to costs which may be awarded);
  - (e) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (4) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the regulations must also include provision for a right of appeal by the tenant or landlord against any decision of a court or tribunal on an application.
- (5) Provision falling within subsection (4) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);

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- (d) suspending the effect of the decision being appealed against, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the decision;
  - (b) to quash the decision;
  - (c) to make a different decision;
  - (d) to remit the decision or any matter relating to the decision to the person who made it;
  - (e) to award costs.
- (7) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within—
- (a) subsection (3)(a), (c), (d) or (e), or
  - (b) subsection (5)(a), (c), (e) or (f),
- tenants' energy efficiency improvements regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

#### *Non-domestic energy efficiency regulations*

### **49 Non-domestic energy efficiency regulations**

- (1) The Secretary of State must make regulations for the purpose of securing that a landlord of a non-domestic PR property—
- (a) which is of such description of non-domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
- may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “non-domestic energy efficiency regulations”.
- (4) For the purposes of non-domestic energy efficiency regulations—  
 “energy performance certificate” has the meaning given by the Energy Performance Regulations;

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“landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);

“relevant energy efficiency improvements” means improvements which—

- (a) are of such description as the regulations provide, and
- (b) can be—
  - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part, or
  - (ii) financed by such other description of financial arrangement as the regulations provide.

(5) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (4).

(6) The first non-domestic energy efficiency regulations must come into force no later than 1 April 2018.

#### **50 Further provision about non-domestic energy efficiency regulations**

(1) Non-domestic energy efficiency regulations may in particular, include provision about—

- (a) the period within which improvements required by the regulations must be started or completed;
- (b) exemptions from any requirement imposed by or under the regulations;
- (c) evidence relating to any requirement imposed by or under the regulations.

(2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—

- (a) relating to any necessary permissions or consents;
- (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.

(3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—

- (a) an exemption from a requirement imposed by or under the regulations;
- (b) that a property is not one in relation to which the regulations have effect;
- (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **51 Sanctions for the purposes of non-domestic energy efficiency regulations**

(1) Non-domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.

(2) Provision falling within subsection (1) includes, in particular, provision—

- (a) for a local weights and measures authority to enforce any requirement imposed by or under the regulations;

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- (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
- including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local weights and measures authority.
- (3) Where non-domestic energy efficiency regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (4) Provision falling within subsection (3) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (5) The provision referred to in subsection (4)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award costs.
- (6) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (4)(a), (c), (e) or (f), non-domestic energy efficiency regulations may revoke or amend any subordinate legislation in so far as the subordinate legislation extends to England and Wales.
- (7) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under a Measure or Act of the National Assembly for Wales.

### *General*

## **52 Regulations and orders: Chapter 2**

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes.
- (2) Regulations and orders under this Chapter are to be made by statutory instrument.
- (3) A statutory instrument containing an order under section 43(5) or 49(5) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing—
  - (a) an order under section 42(1)(a)(iii), or

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- (b) regulations under this Chapter, may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (5) The Secretary of State must obtain the consent of the Welsh Ministers before making provision under this Chapter amending or revoking—
- (a) provision included in an instrument made under a Measure or Act of the National Assembly for Wales;
  - (b) any other subordinate legislation made by the Welsh Ministers (or the National Assembly for Wales established under the Government of Wales Act 1998).
- (6) Subsection (5) does not apply to the extent that the Secretary of State is making incidental or consequential provision.
- (7) The Secretary of State must consult the Welsh Ministers before making—
- (a) domestic energy efficiency regulations, or
  - (b) tenants' energy efficiency improvements regulations,
- which apply in relation to domestic PR properties situated in Wales.
- (8) Subsection (7) does not apply to the extent that consent has been obtained under subsection (5).

**53 Crown application: Chapter 2**

This Chapter binds the Crown.

VALID FROM 01/07/2019

**CHAPTER 3**

PRIVATE RENTED SECTOR: SCOTLAND

*Introductory*

**54 Meaning of “domestic PR property” and “non-domestic PR property”:  
Scotland**

- (1) For the purposes of this Chapter—
- (a) a property is a “Scottish domestic private rented property” if it is let under a tenancy to which Chapter 4 of Part 1 of the Housing (Scotland) Act 2006 (asp 1) applies;
  - (b) a property is a “Scottish non-domestic private rented property” if it—
    - (i) is situated in Scotland,
    - (ii) is let under a tenancy, and
    - (iii) is not a dwelling.



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- (2) In subsection (1)(b) “dwelling” has the meaning given by the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309) (“the Energy Performance (Scotland) Regulations”).
- (3) A Scottish domestic private rented property is referred to in this Chapter as a “Scottish domestic PR property”.
- (4) A Scottish non-domestic private rented property is referred to in this Chapter as a “Scottish non-domestic PR property”.

### *Scottish domestic energy efficiency regulations*

## **55 Scottish domestic energy efficiency regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish domestic PR property—
  - (a) which is of such description of Scottish domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
 may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “Scottish domestic energy efficiency regulations”.
- (4) For the purposes of Scottish domestic energy efficiency regulations—
 

“energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;

“landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);

“relevant energy efficiency improvements” means improvements which—

  - (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,
    - (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
    - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
    - (iv) financed by such other description of financial arrangement as the regulations provide.



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- (5) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) Scottish domestic energy efficiency regulations may come into force no earlier than 1 April 2015.

## **56 Further provision about Scottish domestic energy efficiency regulations**

- (1) Scottish domestic energy efficiency regulations may, in particular, include provision about—
  - (a) the period within which improvements required by the regulations must be started or completed;
  - (b) exemptions from any requirement imposed by or under the regulations;
  - (c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—
  - (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—
  - (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

## **57 Sanctions for the purposes of Scottish domestic energy efficiency regulations**

- (1) Scottish domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) for a local authority to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by a local authority.
- (3) The amount of any civil penalty provided for by Scottish domestic energy efficiency regulations must not exceed £5,000.
- (4) Where Scottish domestic energy efficiency regulations make provision for the imposition of a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.

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- (5) Provision falling within subsection (4) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award expenses.
- (7) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within subsection (5)(a), (c), (e) or (f), Scottish domestic energy efficiency regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.

*Scottish tenants' energy efficiency improvements regulations*

**58 Scottish tenants' energy efficiency improvements regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish domestic PR property which is of such description of Scottish domestic PR property as is provided for by the regulations does not unreasonably refuse a request mentioned in subsection (2).
- (2) The request is one by the tenant of the property to consent to the making of such relevant energy efficiency improvements as are identified in the request.
- (3) Regulations under this section are referred to in this Chapter as “Scottish tenants' energy efficiency improvements regulations”.
- (4) For the purposes of Scottish tenants' energy efficiency improvements regulations—
 

“landlord” and “tenant” have the meaning given by the regulations;

“relevant energy efficiency improvements” means improvements which—

  - (a) are of such description as the regulations provide, and
  - (b) can be—
    - (i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part,

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- (ii) provided free of charge pursuant to an obligation imposed by an order made under section 33BC or 33BD of the Gas Act 1986 or section 41A or 41B of the Electricity Act 1989,
  - (iii) wholly financed pursuant to a combination of such a plan and such an obligation, or
  - (iv) financed by such other description of financial arrangement as the regulations provide.
- (5) Scottish tenants' energy efficiency improvements regulations may come into force no earlier than 1 April 2015.

#### **59 Further provision about Scottish tenants' energy efficiency improvements regulations**

- (1) Scottish tenants' energy efficiency improvements regulations may, in particular, include provision about—
- (a) the form, content and service of a request under the regulations;
  - (b) the form, content and service of any response by the landlord to a request (including the period within which any response must be given);
  - (c) exemptions from any requirement imposed by or under the regulations;
  - (d) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(c) includes, in particular, provision about exemptions—
- (a) relating to any necessary permissions or consents;
  - (b) relating to the likely negative impact on the value of a property of consenting to the request.
- (3) Provision falling within subsection (1)(d) includes, in particular, provision about evidence for the purpose of demonstrating—
- (a) an exemption from a requirement imposed by or under the regulations;
  - (b) that a property is not one in relation to which the regulations have effect;
  - (c) that the improvements for which consent has been requested are not relevant energy efficiency improvements within the meaning given by the regulations.

#### **60 Sanctions for the purposes of Scottish tenants' energy efficiency improvements regulations**

- (1) Scottish tenants' energy efficiency improvements regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision for a tenant to apply to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by or under the regulations.
- (3) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the provision may, in particular, include provision—
- (a) as to the jurisdiction of the court or tribunal to which an application may be made;
  - (b) as to the grounds on which an application may be made;

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- (c) as to the procedure for making an application (including any fee which may be payable);
  - (d) as to the powers of the court or tribunal to which an application is made (including as to expenses which may be awarded);
  - (e) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (4) Where the regulations make provision for a tenant to make an application such as is mentioned in subsection (2), the regulations must also include provision for a right of appeal by the tenant or landlord against any decision of a court or tribunal on an application.
- (5) Provision falling within subsection (4) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the effect of the decision being appealed against, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm the decision;
  - (b) to quash the decision;
  - (c) to make a different decision;
  - (d) to remit the decision or any matter relating to the decision to the person who made it;
  - (e) to award expenses.
- (7) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within—
- (a) subsection (3)(a), (c), (d) or (e), or
  - (b) subsection (5)(a), (c), (e) or (f),
- Scottish tenants' energy efficiency improvements regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.

*Scottish non-domestic energy efficiency regulations*

**61 Scottish non-domestic energy efficiency regulations**

- (1) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish non-domestic PR property—

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- (a) which is of such description of Scottish non-domestic PR property as is provided for by the regulations,
  - (b) in relation to which there is an energy performance certificate, and
  - (c) which falls below such level of energy efficiency (as demonstrated by the energy performance certificate) as is provided for by the regulations,
- may not let the property until the landlord has complied with the obligation mentioned in subsection (2).
- (2) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (3) Regulations under this section are referred to in this Chapter as “Scottish non-domestic energy efficiency regulations”.
- (4) For the purposes of Scottish non-domestic energy efficiency regulations—  
“energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;  
“landlord” and “let the property” have the meaning given by the regulations (and “let the property” may be defined to include “continue to let the property”);  
“relevant energy efficiency improvements” means improvements which—  
(a) are of such description as the regulations provide, and  
(b) can be—  
(i) wholly paid for pursuant to a green deal plan as provided for by Chapter 1 of this Part, or  
(ii) financed by such other description of financial arrangement as the regulations provide.
- (5) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (4).
- (6) Scottish non-domestic energy efficiency regulations may come into force no earlier than 1 April 2015.

## **62 Further provision about Scottish non-domestic energy efficiency regulations**

- (1) Scottish non-domestic energy efficiency regulations may, in particular, include provision about—  
(a) the period within which improvements required by the regulations must be started or completed;  
(b) exemptions from any requirement imposed by or under the regulations;  
(c) evidence relating to any requirement imposed by or under the regulations.
- (2) Provision falling within subsection (1)(b) includes, in particular, provision about exemptions—  
(a) relating to any necessary permissions or consents;  
(b) relating to the likely negative impact on the value of a property of complying with a requirement imposed by or under the regulations.
- (3) Provision falling within subsection (1)(c) includes, in particular, provision about evidence for the purpose of demonstrating—

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- (a) an exemption from a requirement imposed by or under the regulations;
- (b) that a property is not one in relation to which the regulations have effect;
- (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.

### **63 Sanctions for the purposes of Scottish non-domestic energy efficiency regulations**

- (1) Scottish non-domestic energy efficiency regulations may include provision for the purpose of securing compliance with requirements imposed on landlords by or under the regulations.
- (2) Provision falling within subsection (1) includes, in particular, provision—
  - (a) for a local authority constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994 to enforce any requirement imposed by or under the regulations;
  - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations;
  - (c) about the sanctions for the provision of false information in connection with such a requirement;
 including, in cases falling within paragraph (b) or (c), the imposition of a civil penalty by such a local authority.
- (3) Where Scottish non-domestic energy efficiency regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (4) Provision falling within subsection (3) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (5) The provision referred to in subsection (4)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm the penalty;
  - (b) to withdraw the penalty;
  - (c) to vary the amount of the penalty;
  - (d) to award expenses.
- (6) If the Scottish Ministers consider it appropriate for the purpose of, or in consequence of, any provision falling within subsection (4)(a), (c), (e) or (f), Scottish non-domestic energy efficiency regulations may revoke or amend any subordinate legislation if the provision making the revocation or amendment would be within

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the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament.

- (7) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978, except that it includes any instrument made under an Act of the Scottish Parliament.

#### *General*

#### **64 Regulations and orders: Chapter 3**

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes.
- (2) Orders under this Chapter are subject to the negative procedure.
- (3) Regulations under this Chapter are subject to the affirmative procedure.

#### **65 Crown application: Chapter 3**

This Chapter binds the Crown.

## **CHAPTER 4**

### **REDUCING CARBON EMISSIONS AND HOME-HEATING COSTS**

#### **66 Promotion of reductions in carbon emissions: gas transporters and suppliers**

- (1) Section 33BC of the Gas Act 1986 (promotion of reductions in carbon emissions: gas transporters and suppliers) is amended as follows.
- (2) In subsection (1) (power by order to impose an obligation to achieve a carbon emissions reduction target) for “the Authority” substitute “ the Administrator ”.
- (3) After subsection (2) insert—
- “(2A) In this section “the Administrator” means—
- (a) the Authority; or
  - (b) if the order so provides, the Secretary of State or a specified body other than the Authority.”
- (4) In subsection (3) for “the Authority” substitute “ the Administrator ”.
- (5) In subsection (4) for “the Authority” substitute “ (subject to any directions given under subsection (9B)) the Administrator ”.
- (6) In subsection (5) (general provision that may be included in an order imposing an obligation to achieve a carbon emissions reduction target)—
- (a) for paragraphs (ba) and (c) substitute—
    - “(ba) requiring part of a carbon emissions reduction target to be met by action of a specified description;



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- (bb) requiring the whole or any part of a carbon emissions reduction target to be met by action relating to—
  - (i) individuals of a specified description,
  - (ii) property of a specified description,
  - (iii) specified areas or areas of a specified description, or
  - (iv) individuals or property of a specified description in specified areas or areas of a specified description;
- (bc) enabling the Administrator to direct a transporter or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction;
- (bd) preventing action from qualifying for the purpose of meeting the whole or any part of a carbon emissions reduction target unless such persons as are specified in, or determined in accordance with, the order—
  - (i) have been consulted about the action;
  - (ii) have consented to the action;
- (be) requiring action which qualifies for the purpose of meeting both a carbon emissions reduction target and a home-heating cost reduction target to be treated as qualifying only for the purpose of meeting such one of those targets as the transporter or supplier concerned elects;
- (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;”;
- (b) in paragraph (d) for “the Authority” substitute “ the Administrator ”;
- (c) in paragraph (e)—
  - (i) for “the Authority” substitute “ the Administrator ”;
  - (ii) for sub-paragraph (ii) substitute—
    - “(ii) if so, what contribution the proposed action (or any result of that action specified in the determination) is to make towards achieving the carbon emissions reduction target;”;
- (d) in paragraph (f) for “the Authority” substitute “ the Administrator ”;
- (e) after paragraph (f) insert “; and
- (g) requiring the Administrator or a specified body to offer services of a specified kind and authorising a specified fee to be charged to those who take up the offer.”

(7) After subsection (5) insert—

- “(5A) If the order makes provision by virtue of subsection (5)(bc) enabling the Administrator to direct a transporter or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction the order may also make provision—
- (a) authorising the Administrator to require specified persons to provide it with information for the purpose of enabling it to identify and select individuals who are to be the subject of a direction;
  - (b) specifying criteria in accordance with which the Administrator is to select individuals who are to be the subject of a direction;

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- (c) determining, or specifying the method for determining, which transporter or supplier is to be given a direction in relation to any particular individual selected in accordance with provision made under paragraph (b);
  - (d) authorising the Administrator, if it gives a direction to a transporter or supplier, to provide the transporter or supplier with information relating to the individual concerned for the purpose of assisting the transporter or supplier to comply with the direction;
  - (e) as to the times at which a direction may be given;
  - (f) as to the circumstances in which a direction need not be complied with.
- (5B) Provision made by virtue of subsection (5)(c) may in particular provide for an action to be treated as making a greater contribution than it would otherwise do if the action relates to—
- (a) an individual of a specified description,
  - (b) a property of a specified description, or
  - (c) both an individual of a specified description and a property of a specified description.”
- (8) In subsection (6) for “the Authority” substitute “ the Administrator ”.
- (9) After subsection (7) insert—
- “(7A) The order may—
- (a) make provision for any specified requirement contained in it to be treated as a relevant requirement for the purposes of this Part; or
  - (b) if it provides for the Administrator to be a person other than the Authority, make provision for and in connection with enabling the Administrator to enforce any requirement imposed by the order.
- (7B) Provision made by virtue of paragraph (b) of subsection (7A) may, in particular, include provision corresponding to or applying (with or without modifications) any of sections 28 to 30F and section 38.”
- (10) In subsection (8) omit paragraph (b).
- (11) After subsection (9) insert—
- “(9A) The order may make provision requiring the Administrator to give guidance to transporters or suppliers concerning such matters relating to the order as are specified.
- (9B) The Administrator shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.”
- (12) For subsection (10A) substitute—
- “(10A) The Secretary of State must obtain the consent of the Scottish Ministers before making an order under this section which contains provision that—
- (a) is included by virtue of subsection (2)(b),
  - (b) extends to Scotland, and

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(c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.”

(13) After subsection (12) insert—

“(12A) Subsection (12) does not apply to an order under this section made only for the purpose of amending an earlier order under this section so as to alter the provision included in the earlier order by virtue of any of paragraphs (b), (ba) or (c) of subsection (5). But such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12B) If an order under this section provides for the Administrator to be a body other than the Authority, the Secretary of State may make payments to the body of such amounts as the Secretary of State considers appropriate.”

(14) In subsection (13) before the definition of “microgeneration” insert—

““home-heating cost reduction target” has the meaning given by section 33BD(2)(a);”.

(15) The reference in subsection (12A) of section 33BC of the Gas Act 1986 to paragraph (c) of subsection (5) of that section includes a reference to paragraph (c) of subsection (5) of that section before its substitution by subsection (6) of this section.

## **67 Promotion of reductions in carbon emissions: electricity generators, distributors and suppliers**

(1) Section 41A of the Electricity Act 1989 (promotion of reductions in carbon emissions: electricity generators, distributors and suppliers) is amended as follows.

(2) In subsection (1) (power by order to impose an obligation to achieve a carbon emissions reduction target) for “the Authority” substitute “ the Administrator ”.

(3) After subsection (2) insert—

“(2A) In this section “the Administrator” means—

- (a) the Authority; or
- (b) if the order so provides, the Secretary of State or a specified body other than the Authority.”

(4) In subsection (3) for “the Authority” substitute “ the Administrator ”.

(5) In subsection (4) for “the Authority” substitute “ (subject to any directions given under subsection (9B)) the Administrator ”.

(6) In subsection (5) (general provision that may be included in an order imposing an obligation to achieve a carbon emissions reduction target)—

(a) for paragraphs (ba) and (c) substitute—

- “(ba) requiring part of a carbon emissions reduction target to be met by action of a specified description;
- (bb) requiring the whole or any part of a carbon emissions reduction target to be met by action relating to—
  - (i) individuals of a specified description,
  - (ii) property of a specified description,
  - (iii) specified areas or areas of a specified description, or

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- (iv) individuals or property of a specified description in specified areas or areas of a specified description;
  - (bc) enabling the Administrator to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction;
  - (bd) preventing action from qualifying for the purpose of meeting the whole or any part of a carbon emissions reduction target unless such persons as are specified in, or determined in accordance with, the order—
    - (i) have been consulted about the action;
    - (ii) have consented to the action;
  - (be) requiring action which qualifies for the purpose of meeting both a carbon emissions reduction target and a home-heating cost reduction target to be treated as qualifying only for the purpose of meeting such one of those targets as the distributor or supplier concerned elects;
  - (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;”;
  - (b) in paragraph (d) for “the Authority” substitute “ the Administrator ”;
  - (c) in paragraph (e)—
    - (i) for “the Authority” substitute “ the Administrator ”;
    - (ii) for sub-paragraph (ii) substitute—
      - “(ii) if so, what contribution the proposed action (or any result of that action specified in the determination) is to make towards achieving the carbon emissions reduction target;”;
  - (d) in paragraph (f) for “the Authority” substitute “ the Administrator ”;
  - (e) after paragraph (f) insert “; and
    - (g) requiring the Administrator or a specified body to offer services of a specified kind and authorising a specified fee to be charged to those who take up the offer.”
- (7) After subsection (5) insert—

“(5A) If the order makes provision by virtue of subsection (5)(bc) enabling the Administrator to direct a distributor or supplier to meet part of a carbon emissions reduction target by action relating to an individual named in the direction the order may also make provision—

- (a) authorising the Administrator to require specified persons to provide it with information for the purpose of enabling it to identify and select individuals who are to be the subject of a direction;
- (b) specifying criteria in accordance with which the Administrator is to select individuals who are to be the subject of a direction;
- (c) determining, or specifying the method for determining, which distributor or supplier is to be given a direction in relation to any particular individual selected in accordance with provision made under paragraph (b);
- (d) authorising the Administrator, if it gives a direction to a distributor or supplier, to provide the distributor or supplier with information

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relating to the individual concerned for the purpose of assisting the distributor or supplier to comply with the direction;

- (e) as to the times at which a direction may be given;
- (f) as to the circumstances in which a direction need not be complied with.

(5B) Provision made by virtue of subsection (5)(c) may in particular provide for an action to be treated as making a greater contribution than it would otherwise do if the action relates to—

- (a) an individual of a specified description,
- (b) a property of a specified description, or
- (c) both an individual of a specified description and a property of a specified description.”

(8) In subsection (6) for “the Authority” substitute “ the Administrator ”.

(9) After subsection (7) insert—

“(7A) The order may—

- (a) make provision for any specified requirement contained in it to be treated as a relevant requirement for the purposes of this Part; or
- (b) if it provides for the Administrator to be a person other than the Authority, make provision for and in connection with enabling the Administrator to enforce any requirement imposed by the order.

(7B) Provision made by virtue of paragraph (b) of subsection (7A) may, in particular, include provision corresponding to or applying (with or without modifications) any of sections 25 to 28.”

(10) In subsection (8) omit paragraph (b).

(11) After subsection (9) insert—

“(9A) The order may make provision requiring the Administrator to give guidance to distributors or suppliers concerning such matters relating to the order as are specified.

(9B) The Administrator shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.”

(12) For subsection (10A) substitute—

“(10A) The Secretary of State must obtain the consent of the Scottish Ministers before making an order under this section which contains provision that—

- (a) is included by virtue of subsection (2)(b),
- (b) extends to Scotland, and
- (c) would be within the legislative competence of the Scottish Parliament if contained in an Act of that Parliament.”

(13) After subsection (12) insert—

“(12A) Subsection (12) does not apply to an order under this section made only for the purpose of amending an earlier order under this section so as to alter the provision included in the earlier order by virtue of any of paragraphs (b), (ba)

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or (c) of subsection (5). But such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(12B) If an order under this section provides for the Administrator to be a body other than the Authority, the Secretary of State may make payments to the body of such amounts as the Secretary of State considers appropriate.”

(14) In subsection (13) before the definition of “microgeneration” insert—

““home-heating cost reduction target” has the meaning given by section 41B(2)(a);”.

(15) The reference in subsection (12A) of section 41A of the Electricity Act 1989 to paragraph (c) of subsection (5) of that section includes a reference to paragraph (c) of subsection (5) of that section before its substitution by subsection (6) of this section.

(16) The power to make orders under section 41A of the Electricity Act 1989 may not be exercised so as to impose an obligation on an electricity generator that has effect after 31 December 2012.

## **68 Promotion of reductions in home-heating costs: gas transporters and suppliers**

After section 33BC of the Gas Act 1986 (promotion of reductions in carbon emissions: gas transporters and suppliers) insert—

### **“33BD Promotion of reductions in home-heating costs: gas transporters and gas suppliers**

- (1) The Secretary of State may by order impose—
- (a) on each gas transporter (or each gas transporter of a specified description); and
  - (b) on each gas supplier (or each gas supplier of a specified description), an obligation to achieve, within a specified period and in accordance with the order, the home-heating cost reduction target to be determined by the Administrator under the order for that transporter or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”).
- (2) In this section—
- (a) “the Administrator” means—
    - (i) the Authority; or
    - (ii) if the order so provides, the Secretary of State or a specified body other than the Authority;
  - (b) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes;
  - (c) “specified” means specified in the order.
- (3) The power to make orders under this section may be exercised so as to impose more than one home-heating cost reduction obligation on a person in relation to the same period or to periods that overlap to any extent.
- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12B) of section 33BC apply to an order under this section as they apply to an order under that section, with the following modifications—

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- (a) for “carbon emissions reduction obligation” (in each place) substitute “home-heating cost reduction obligation”;
  - (b) for “carbon emissions reduction obligations” (in each place) substitute “home-heating cost reduction obligations”;
  - (c) for “carbon emissions reduction target” (in each place other than in paragraph (be) of subsection (5)) substitute “home-heating cost reduction target”;
  - (d) for “carbon emissions reduction targets” (in each place) substitute “home-heating cost reduction targets”; and
  - (e) omit paragraph (a) of subsection (10A).
- (5) Subsections (4) and (9B) of section 33BC apply to the carrying out by the Secretary of State and the Administrator of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section.
- (6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.”

## **69 Promotion of reductions in home-heating costs: electricity distributors and suppliers**

After section 41A of the Electricity Act 1989 (promotion of reductions in carbon emissions: electricity generators, distributors and suppliers) insert—

### **“41B Promotion of reductions in home-heating costs: electricity distributors and electricity suppliers**

- (1) The Secretary of State may by order impose—
- (a) on each electricity distributor (or each electricity distributor of a specified description); and
  - (b) on each electricity supplier (or each electricity supplier of a specified description),
- an obligation to achieve, within a specified period and in accordance with the order, the home-heating cost reduction target to be determined by the Administrator under the order for that distributor or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”).
- (2) In this section—
- (a) “the Administrator” means—
    - (i) the Authority; or
    - (ii) if the order so provides, the Secretary of State or a specified body other than the Authority;
  - (b) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes;
  - (c) “specified” means specified in the order.
- (3) The power to make orders under this section may be exercised so as to impose more than one home-heating cost reduction obligation on a person in relation to the same period or to periods that overlap to any extent.



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- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12B) of section 41A apply to an order under this section as they apply to an order under that section, with the following modifications—
- (a) for “carbon emissions reduction obligation” (in each place) substitute “home-heating cost reduction obligation”;
  - (b) for “carbon emissions reduction obligations” (in each place) substitute “home-heating cost reduction obligations”;
  - (c) for “carbon emissions reduction target” (in each place other than in paragraph (be) of subsection (5)) substitute “home-heating cost reduction target”;
  - (d) for “carbon emissions reduction targets” (in each place) substitute “home-heating cost reduction targets”; and
  - (e) omit paragraph (a) of subsection (10A).
- (5) Subsections (4) and (9B) of section 41A apply to the carrying out by the Secretary of State and the Administrator of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section.
- (6) No person shall be required by virtue of this section to provide any information which he could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.”

## 70 Overall home-heating cost reduction targets

After section 103 of the Utilities Act 2000 (overall carbon emissions reduction targets) insert—

### “103A Overall home-heating cost reduction targets

- (1) For the purposes of the exercise of the functions of the Administrator under either or both of—
- (a) section 33BD of the 1986 Act (promotion of reductions in home-heating costs: gas transporters and suppliers) and any order made under that section, and
  - (b) section 41B of the 1989 Act (promotion of reductions in home-heating costs: electricity distributors and suppliers) and any order made under that section,
- the Secretary of State may by order specify an overall target for the promotion of measures for reducing the cost to individuals of heating their homes.
- (2) The power conferred by this section may be exercised so as to specify more than one overall target in relation to the same period or to periods that overlap to any extent.
- (3) Where an overall target applies in relation to both sections mentioned in subsection (1), the order specifying the target may make provision for the target to be apportioned between—
- (a) persons who are gas transporters or gas suppliers (for the purposes of section 33BD of the 1986 Act and any order made under that section); and

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- (b) persons who are electricity distributors or electricity suppliers (for the purposes of section 41B of the 1989 Act and any order under that section),

by reference to such criteria as may be specified in the order.

- (4) The Administrator shall exercise its functions under the provisions mentioned in subsection (1) in relation to which an overall target applies (and in particular its functions relating to the determination of home-heating cost reduction targets) in the manner it considers best calculated to result in the achievement of the overall target.
- (5) Before making an order under this section the Secretary of State shall consult the Authority, the Council, gas transporters, gas suppliers, electricity distributors, electricity suppliers, and such other persons as the Secretary of State considers appropriate.
- (6) An order under this section shall not be made unless a draft of the instrument containing it has been laid before, and approved by a resolution of, each House of Parliament.”

## 71 **Power of Secretary of State to require information: carbon emissions reduction targets and home-heating cost reduction targets**

After section 103A of the Utilities Act 2000 insert—

### **“103B Power of Secretary of State to require information: carbon emissions reduction targets and home-heating cost reduction targets**

- (1) The Secretary of State may by notice require a person within subsection (3) to provide the Secretary of State with specified information, or information of a specified kind, for the purpose of enabling the Secretary of State—
  - (a) to decide whether to make a carbon emissions reduction order or a home-heating cost reduction order and, if so, what provision to include in the order;
  - (b) to review the operation and effect of a carbon emissions reduction order or a home-heating cost reduction order;
  - (c) to establish and maintain a record (“a measures record”) of properties in respect of which carbon emissions reduction measures or home-heating cost reduction measures have been taken and of the type of measure taken in respect of each such property.
- (2) For the purpose of enabling a person (“A”) to establish and maintain a measures record on behalf of the Secretary of State, the Secretary of State may by notice require any person within subsection (3) to provide A with specified information or information of a specified kind.
- (3) Those persons are—
  - (a) gas transporters and gas suppliers;
  - (b) electricity distributors and electricity suppliers;
  - (c) the Authority; and
  - (d) any body other than the Authority that is for the time being the Administrator in relation to a carbon emissions reduction order or a home-heating cost reduction order.

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- (4) Information required to be provided by a notice under this section must be provided—
- (a) in such form as may be specified;
  - (b) within such period as may be specified or at such intervals as may be specified.
- (5) No person shall be required by a notice under this section to provide any information which the person could not be compelled to give in evidence in civil proceedings in the High Court or, in Scotland, the Court of Session.
- (6) Information obtained by virtue of this section may be disclosed by the Secretary of State—
- (a) to the Welsh Ministers for the purpose of enabling them to review the operation and effect in Wales of a carbon emissions reduction order or a home-heating cost reduction order;
  - (b) to the Scottish Ministers for the purpose of enabling them to review the operation and effect in Scotland of a carbon emissions reduction order or a home-heating cost reduction order.
- (7) In sections 28 to 30F and section 38 of the 1986 Act (enforcement of relevant requirements etc) a reference to a “relevant requirement” is to be treated as including a reference to a requirement imposed on a gas transporter or gas supplier under this section.
- (8) In sections 25 to 28 of the 1989 Act (enforcement of relevant requirements etc) a reference to a “relevant requirement” is to be treated as including a reference to a requirement imposed on an electricity distributor or electricity supplier under this section.
- (9) In this section—
- “a carbon emissions reduction order” means an order under—
- (a) section 33BC of the 1986 Act;
  - (b) section 41A of the 1989 Act; or
  - (c) section 103 of this Act;
- “a home-heating cost reduction order” means an order under—
- (a) section 33BD of the 1986 Act;
  - (b) section 41B of the 1989 Act; or
  - (c) section 103A of this Act;
- “a carbon emissions reduction measure” is a measure of a kind mentioned in subsection (2) of each of section 33BC of the 1986 Act and section 41A of the 1989 Act;
- “a home-heating cost reduction measure” is a measure of a kind mentioned in subsection (2)(b) of each of section 33BD of the 1986 Act and section 41B of the 1989 Act;
- “specified” means specified in a notice under this section.”

## 72 Minor and consequential amendments

Schedule 1 contains minor and consequential amendments relating to this Chapter.

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## CHAPTER 5

### INFORMATION ABOUT ENERGY CONSUMPTION, EFFICIENCY AND TARIFFS

#### *Smart meters*

#### **73 Smart meters**

- (1) Section 88 of the Energy Act 2008 (power to modify licence conditions etc: smart meters) is amended in accordance with subsections (2) to (6).
- (2) In subsection (1)(a) (type of licence that may be modified)—
  - (a) for “6(1)(c)” substitute “ 6(1)(b), (c) ”;
  - (b) before “distribution” insert “ transmission, ”.
- (3) In subsection (3) (non-exhaustive list of modifications that may be made) after paragraph (j) insert—
  - “(ja) provision requiring the holder of a licence to supply information to the Secretary of State or the Authority (or both) so as to enable them to assess any matter relating to the provision, installation, or operation of meters;”.
- (4) In subsection (4) (further provision about the manner in which the power may be exercised) in paragraph (a) after “relation to” insert “ different areas or ”.
- (5) In subsection (5) (period after which the power may not be exercised) for the words from “the end of the period of 5 years” to the end substitute “ 1 November 2018 ”.
- (6) In subsection (6)(c) for “6(1)(c)” substitute “ 6(1)(b), (c) ”.
- (7) In section 56FB of the Electricity Act 1989 (supplemental provision about the power to provide for activities connected with smart meters to be licensable activities) in subsection (2) (period after which the power may not be exercised) for the words from “the end of the period of 5 years” to the end substitute “ 1 November 2018 ”.
- (8) In section 41HB of the Gas Act 1986 (supplemental provision about the power to provide for activities connected with smart meters to be licensable activities) in subsection (2) (period after which the power may not be exercised) for the words from “the end of the period of 5 years” to the end substitute “ 1 November 2018 ”.

#### *Energy performance certificates*

#### **74 Access to register of energy performance certificates etc: England and Wales**

- (1) The Secretary of State may make regulations for the purpose of authorising the person keeping a register to disclose, in accordance with the provision made in the regulations, the documents or data entered onto the register.
- (2) The power under subsection (1) may be exercised, in particular, to make provision—
  - (a) excluding a document or data, or a specified part of a document or data, from disclosure where the document or data relates to a specified description of buildings;

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- (b) excluding a document or data, or a specified part of a document or data, from disclosure to a specified description of persons;
  - (c) restricting the number of disclosures made to a specified description of persons;
  - (d) for a disclosure made to a specified description of persons to be subject to specified conditions;
  - (e) as to the sanctions for non-compliance with any condition specified by virtue of paragraph (d) (including sanctions preventing or restricting future disclosures);
  - (f) in consequence of any provision which is made by virtue of paragraphs (a) to (e).
- (3) In subsection (1) “a register” means a register maintained under Part 6 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (S.I. 2007/991).
- (4) In subsection (2) “specified” means specified in the regulations made under this section.
- (5) Regulations under this section may make different provision for different cases or circumstances or for different purposes.
- (6) Regulations under this section are subject to the negative procedure.
- (7) For the purposes of this section a reference to the disclosure of a document or data includes a reference to disclosure of information derived from the document or data.

## **75 Access to register of energy performance certificates etc: Scotland**

- (1) The Scottish Ministers may make regulations for the purpose of authorising or requiring the person keeping a register to disclose, in accordance with the provision made in the regulations, the documents or data entered onto the register.
- (2) The power under subsection (1) may be exercised, in particular, to make provision—
- (a) excluding a document or data, or a specified part of a document or data, from disclosure where the document or data relates to a specified description of buildings;
  - (b) excluding a document or data, or a specified part of a document or data, from disclosure to a specified description of persons;
  - (c) restricting the number of disclosures made to a specified description of persons;
  - (d) for a disclosure made to a specified description of persons to be subject to specified conditions;
  - (e) as to the sanctions for non-compliance with any condition specified by virtue of paragraph (d) (including sanctions preventing or restricting future disclosures);
  - (f) in consequence of any provision which is made by virtue of paragraphs (a) to (e).
- (3) In subsection (1) “a register” means a register maintained under regulation 10 of the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I. 2008/309).

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- (4) In subsection (2) “specified” means specified in the regulations made under this section.
- (5) Regulations under this section may make different provision for different cases or circumstances or for different purposes.
- (6) Regulations under this section are subject to the negative procedure.
- (7) For the purposes of this section a reference to the disclosure of a document or data includes a reference to disclosure of information derived from the document or data.

**Commencement Information**

**I38** S. 75 in force at 22.6.2012 by S.S.I. 2012/191, art. 2(1)(2)(e)

*Information about tariffs*

**76 Power to modify energy supply licences: information about tariffs**

- (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 power under subsection (1) may be exercised for the purpose only of securing that a licence holder provides a customer on a domestic tariff with information about one or more of the licence holder's lowest domestic tariffs.
- (3) The information to be provided about a tariff by virtue of subsection (2) may, in particular, include information about—
  - (a) the amount of the tariff;
  - (b) the amount the customer would have paid or saved in relation to any past period if the customer had been on the tariff for that period;
  - (c) the amount the customer would be likely to pay or save in relation to any future period if the customer were on the tariff for that period;
  - (d) where to find further information about the tariff;
  - (e) how to switch to it.
- (4) Modifications under subsection (1) may, in particular, include provision regarding—
  - (a) which one or more domestic tariffs of a licence holder are its lowest domestic tariffs;
  - (b) which of its lowest domestic tariffs a licence holder must provide information about;
  - (c) how and when the information must be provided;
  - (d) the form in which it must be provided.

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- (5) The power under subsection (1)—
  - (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 or circumstances;
  - (c) includes a power to make consequential modifications.
- (6) Provision included in licences by virtue of the power may make different provision for different cases.
- (7) The power under subsection (1) may not be exercised after 1 November 2018.
- (8) In this section—
  - “domestic supply contract” means a contract for the supply of gas or electricity by a licence holder to a customer at domestic premises wholly or mainly for domestic purposes;
  - “domestic tariff” means a tariff under a domestic supply contract.

## **77 Power to modify energy supply licences: procedure and supplemental**

- (1) Before making a modification, the Secretary of State must consult—
  - (a) the holder of any licence being modified,
  - (b) the Gas and Electricity Markets Authority, and
  - (c) such other persons as the Secretary of State considers appropriate.
- (2) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (3) 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 Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (4) Where the Secretary of State makes a modification of the standard conditions of a licence of any type, the Gas and Electricity Markets Authority must make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time.
- (5) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences), in paragraph (f) (as inserted by section 22(7) of this Act), after “Part 1” insert “ or section 76 ”.
- (6) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences), after “Part 1” (as inserted by section 22(8) of this Act) insert “ or section 76 ”.
- (7) In this section “modification” means a modification under section 76.

## **78 General duties of the Secretary of State**

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 76 or 77 of this Act with respect to holders of licences under section 7A(1) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.



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- (2) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to functions of the Secretary of State under section 76 or 77 of this Act with respect to holders of licences under section 6(1)(d) of that Act as they apply in relation to functions of the Secretary of State under Part 1 of that Act.

## PART 2

### SECURITY OF ENERGY SUPPLIES

#### CHAPTER 1

##### ELECTRICITY SUPPLY

### 79 **Annual report by Gas and Electricity Markets Authority on security of electricity supply**

Before section 47 of the Electricity Act 1989 (and after the cross-heading immediately preceding that section) insert—

**“47ZA Annual report by Authority on security of electricity supply**

- (1) The Authority must, before 1 September 2012, and before that date in every subsequent calendar year—
  - (a) prepare a report on the future demand for, and supply of, electricity in Great Britain, in accordance with subsection (2), and
  - (b) send the report to the Secretary of State.
- (2) A report under subsection (1) must include, as regards each forecast period—
  - (a) a forecast of the peak demand for the supply of electricity to consumers in Great Britain;
  - (b) an assessment of different possible capacity margins for that supply, and of the degree of protection that each would provide against the risk of shortfalls in supply due to unexpected demand or unexpected loss of capacity.
- (3) The forecast periods in relation to a report under subsection (1) are—
  - (a) each of the four calendar years immediately following the year of the report; or
  - (b) any other periods that the Secretary of State specifies by order.
- (4) A forecast by virtue of subsection (2)(a) must be expressed as a single figure in megawatts rounded to the nearest 100 megawatts, unless the Secretary of State directs otherwise.
- (5) An assessment by virtue of subsection (2)(b) must take into account, in particular—
  - (a) the generation of electricity;
  - (b) the operation of electricity interconnectors;
  - (c) the storage of electricity;

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- (d) the extent to which the available capacity of a generating station is likely to be lower than its maximum possible capacity due to routine maintenance, weather conditions or any other expected limitation on its operation;
  - (e) demand side response.
- (6) A forecast or assessment by virtue of subsection (2) may to any extent be made by, or based on information provided by—
- (a) the holder of a transmission licence;
  - (b) any other person.
- (7) The Secretary of State may give the Authority directions regarding—
- (a) the form of a report under subsection (1);
  - (b) the manner in which such a report must be prepared or sent;
  - (c) the manner in which a forecast or assessment by virtue of subsection (2) must be made or expressed (including, in particular, the method of calculation of any of the things mentioned in subsection (2)(a) or (b)).
- (8) In this section—
- “capacity margin” means the amount by which the peak demand for the supply of electricity is exceeded by the capacity likely to be available to meet that demand;
  - “consumers” includes both existing and future consumers;
  - “demand side response” means the cessation of, or a reduction in, the provision of electricity to a person at times of high demand, by agreement with the person.”

## **80 Annual report by Secretary of State on security of energy supplies**

- (1) Section 172 of the Energy Act 2004 (annual report by Secretary of State on security of energy supplies) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) In 2012 and in every subsequent calendar year the report must also include, in particular, as regards each of the assessment periods, an assessment by the Secretary of State of what electricity supply capacity is required.
- (2B) For the purposes of subsection (2A) the electricity supply capacity required is the capacity required for the purpose of meeting the demands of consumers for the supply of electricity in Great Britain, including spare capacity to allow for unexpected demands or unexpected loss of capacity.
- (2C) The assessment periods, in relation to a report under subsection (1), are—
- (a) each of the four calendar years immediately following the year of the report; or
  - (b) any other periods that the Secretary of State specifies by order.
- (2D) An assessment by virtue of subsection (2A) must take into account, in particular—
- (a) the generation of electricity;
  - (b) the operation of electricity interconnectors;
  - (c) the storage of electricity;

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- (d) the extent to which the available capacity of a generating station is likely to be lower than its maximum possible capacity due to routine maintenance, weather conditions or any other expected limitation on its operation;
  - (e) demand side response.”
- (3) In subsection (3), after “report” insert “, other than the assessment by virtue of subsection (2A), ”.
- (4) After subsection (3) insert—
- “(3A) An order under this section is subject to the negative resolution procedure.”
- (5) In subsection (4)—
- (a) after the definition of “consumers” insert—
    - “ “demand side response” means the cessation of, or a reduction in, the provision of electricity to a person at times of high demand, by agreement with the person;”;
  - (b) after “distribution system,” insert “ “ electricity interconnector ”, “generating station”, “generation”, “supply,” ”.

## CHAPTER 2

### GAS SUPPLY

#### **81 Power of the Gas and Electricity Markets Authority to direct a modification of the Uniform Network Code**

- (1) After section 36B of the Gas Act 1986 insert—

##### **“36C Power to direct a modification of the UNC**

- (1) The Authority may direct the operator of the gas National Transmission System to make a modification to which this section applies and which is specified in the direction to the Uniform Network Code.
- (2) This section applies to a modification—
  - (a) which relates to the arrangements contained in the Code in respect of a Gas Supply Emergency, and
  - (b) which the Authority considers is a market-based modification.
- (3) The Authority may give a direction under this section only if it considers that the modification will do either or both of the following—
  - (a) decrease the likelihood of a Gas Supply Emergency occurring;
  - (b) decrease the duration or severity of a Gas Supply Emergency which occurs.
- (4) In the exercise of the power under this section the Authority must have regard to the purposes of Standard Special Condition A11 of licences granted under section 7 of this Act.

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- (5) For the purposes of subsection (2), a modification is “market-based” if it relates to the creation of financial incentives for gas shippers or gas transporters.
- (6) Before giving a direction under this section the Authority must consult such persons as it considers appropriate.
- (7) In this section—  
“Gas Supply Emergency” and “National Transmission System” have the meaning given by the Uniform Network Code;  
“the Uniform Network Code” means the document of that title required to be prepared pursuant to Standard Special Condition A11 of licences granted under section 7 of this Act.”
- (2) The requirement of subsection (6) of section 36C of the Gas Act 1986 may be satisfied by consultation before, as well as consultation after, the passing of this Act.
- (3) In section 38A of the Gas Act 1986 (reasons for decisions), in subsection (1), after paragraph (e) insert—  
“(ea) the giving of a direction under section 36C;”.
- (4) In section 173 of the Energy Act 2004 (appeals to the Competition Commission), after subsection (2) insert—  
“(2A) This section also applies to a decision by GEMA to give a direction under section 36C of the Gas Act 1986 (power to direct a modification of the Uniform Network Code).  
(2B) But subsection (2A) does not have effect in relation to such a decision if it falls within a description of decisions for the time being excluded from the right of appeal under this section by an order made by the Secretary of State.”
- (5) In section 175 of the Energy Act 2004 (determination of appeals), in subsection (4)(b) for “the purposes for which the relevant condition has effect” substitute “—  
(i) the purposes for which the relevant condition has effect (in the case of an appeal by virtue of section 173(2)), or  
(ii) the purposes of the power to give a direction under section 36C of the Gas Act 1986 or the purposes of Standard Special Condition A11 of licences granted under section 7 of that Act (in the case of an appeal by virtue of section 173(2A))”.
- (6) In Schedule 22 to the Energy Act 2004 (procedure for appeals under section 173 of that Act), in paragraph 3(6) (suspension of a decision) after “direction” insert “ (including a direction being appealed against by virtue of section 173(2A) of this Act) ”.

## CHAPTER 3

### UPSTREAM PETROLEUM INFRASTRUCTURE

#### 82 Acquisition of rights to use upstream petroleum infrastructure

- (1) This section applies where—

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- (a) a person makes an application to the owner of a relevant upstream petroleum pipeline for a right to have things of a kind specified in the application conveyed by the pipeline during such period as is so specified and in such quantities as are so specified;
- (b) a person makes an application to the owner of a relevant oil processing facility for a right to have petroleum of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified; or
- (c) a person makes an application to the owner of a relevant gas processing facility for a right to have piped gas of a kind specified in the application processed by the facility during such period as is so specified and in such quantities as are so specified.

And references in this section to “the access application” are to the application made to the owner of the pipeline or facility.

- (2) This section does not apply by virtue of subsection (1)(c) where a person makes an application to the owner of a gas processing facility for a right to have gas processed by the facility for a downstream purpose (as to which, see section 12 of the Gas Act 1995).
- (3) For the purposes of subsection (1) an upstream petroleum pipeline, an oil processing facility or a gas processing facility is “relevant” if and in so far as it is situated—
  - (a) in Great Britain;
  - (b) in the territorial sea adjacent to Great Britain; or
  - (c) in the sea in any area designated under section 1(7) of the Continental Shelf Act 1964;
 but an upstream petroleum pipeline which is so situated is not “relevant” if it is a pipeline to which section 17GA of the Petroleum Act 1998 applies (petroleum pipelines subject to Norwegian access system).
- (4) If the applicant and the owner do not reach agreement on the access application, the applicant may apply to the Secretary of State for a notice under subsection (11) which would secure to the applicant the right sought in the access application.
- (5) The Secretary of State may not consider an application under subsection (4) unless satisfied that the applicant and the owner have had a reasonable time in which to reach agreement.
- (6) When considering an application under subsection (4) the Secretary of State must—
  - (a) decide whether the application is to be—
    - (i) rejected,
    - (ii) adjourned to enable further negotiation between the applicant and the owner, or
    - (iii) considered further, and
  - (b) in the case of a decision to consider the application further, give an opportunity to be heard to—
    - (i) the applicant and the owner;
    - (ii) any person with a right to have anything conveyed by the pipeline or processed by the facility;
    - (iii) the Health and Safety Executive;
    - (iv) such other persons as the Secretary of State considers appropriate.

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- (7) When giving further consideration to an application under subsection (4) the Secretary of State must (so far as relevant) take into account—
- (a) capacity which is or can reasonably be made available in the pipeline or at the facility;
  - (b) any incompatibilities of technical specification which cannot reasonably be overcome;
  - (c) difficulties which cannot reasonably be overcome and which could prejudice the efficient, current and planned future production of petroleum;
  - (d) the reasonable needs of the owner and any associate of the owner for the conveying and processing of petroleum;
  - (e) the interests of all users and operators of the pipeline or facility;
  - (f) the need to maintain security and regularity of supplies of petroleum; and
  - (g) the number of parties involved in the dispute.
- (8) The Secretary of State may give a notice under subsection (11) only if the condition in subsection (9) or (10) is met.
- (9) The condition in this subsection is that the Secretary of State is satisfied that the notice will not prejudice—
- (a) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which the owner or an associate of the owner requires or may reasonably be expected to require;
  - (b) the conveying by the pipeline, or the processing by the facility, of the quantities of substances which another person with a right to have things so conveyed or processed requires to be conveyed or processed in exercise of that right.
- (10) The condition in this subsection is that the notice contains provision for the purpose of ensuring that if the notice does prejudice any of the matters mentioned in subsection (9) any person who suffers loss as a result may recover from the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.
- (11) A notice under this subsection may contain such provisions as the Secretary of State considers appropriate for any of the following purposes—
- (a) to secure to the applicant the right sought in the access application;
  - (b) to secure that the exercise of the right is not prevented or impeded;
  - (c) to secure to the applicant such ancillary or incidental rights as the Secretary of State considers necessary or expedient, which may include the right to have a pipeline of the applicant's connected to the pipeline or facility by the applicant or the owner;
  - (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (12) A notice under subsection (11) may also contain such provisions as the Secretary of State considers appropriate for the purpose of ensuring that no person suffers a loss by reason of the mixing together of—
- (a) substances conveyed by the pipeline or processed by the facility on behalf of the applicant in exercise of a right secured by the notice; and
  - (b) substances conveyed by the pipeline or processed by the facility by or on behalf of any other person.

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- (13) A notice under subsection (11) may also—
- (a) contain provision authorising the owner to recover from the applicant payments by way of consideration for any right secured by the notice of amounts specified in the notice or determined in accordance with the notice;
  - (b) contain provision permitting a right secured or a duty imposed by the notice to be assigned.
- (14) A notice under subsection (11) is to be given to the owner and the applicant.
- (15) If a notice under subsection (11) contains provision of a sort mentioned in subsection (10) or (12) the Secretary of State must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or processed by the facility.
- (16) Before giving a copy of a notice under subsection (15) the Secretary of State must—
- (a) remove from the copy any provision included in the notice by virtue of subsection (11)(d) or (13)(a); and
  - (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the Secretary of State considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (17) A notice under subsection (11) does not come into force unless and until the applicant indicates acceptance of the terms of the notice in such manner and within such period as is specified in the notice.
- (18) For the purposes of subsection (3)(b) and (c) a pipeline is to be treated as being situated in the sea in any area if it is situated in, under or over the sea in that area.
- (19) In this section and section 83 “owner”, in relation to an upstream petroleum pipeline, an oil processing facility or a gas processing facility, means any of the following—
- (a) a person in whom the pipeline or facility is vested;
  - (b) a lessee and any person occupying or controlling the pipeline or facility; and
  - (c) a person who has the right to have things conveyed by the pipeline or processed by the facility, where such right has been acquired by that person on terms that—
    - (i) the person is entitled to exercise the right for a period of one year or more; and
    - (ii) the right is capable of being assigned or otherwise disposed of to another person.

**Modifications etc. (not altering text)**

- C1** S. 82 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))
- C2** S. 82 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 para. 3\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

**Commencement Information**

- I39** S. 82 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

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### **83 Power of Secretary of State to give a notice under section 82(11) on own initiative**

- (1) This section applies where—
  - (a) a person has made an application of a kind mentioned in subsection (1) of section 82 to the owner of a pipeline or facility, and
  - (b) the applicant and the owner have not reached agreement on the application.
- (2) The Secretary of State may on his or her own initiative give a notice under subsection (11) of section 82 which would secure to the applicant the right sought in the application; but this is subject to subsection (8) of that section and subsections (3) and (4).
- (3) The Secretary of State may not exercise the power conferred by subsection (2) unless the Secretary of State is satisfied that—
  - (a) the applicant and the owner have had a reasonable time in which to reach agreement on the application; and
  - (b) there is no realistic prospect of them doing so.
- (4) In considering whether to exercise the power conferred by subsection (2) the Secretary of State must—
  - (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (5) an opportunity to be heard.
- (5) Those persons are—
  - (a) the applicant and the owner;
  - (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the Secretary of State considers appropriate.

#### **Modifications etc. (not altering text)**

- C3** S. 83 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))
- C4** S. 83 modified by 1962 c. 58, s. 9(9)(a) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 para. 3\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

#### **Commencement Information**

- I40** S. 83 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

### **84 Compulsory modification of upstream petroleum infrastructure**

- (1) This section applies where—
  - (a) a person has made an application of a kind mentioned in subsection (1) of section 82, and
  - (b) the Secretary of State is considering whether to give a notice under subsection (11) of that section which would secure to the applicant the right sought in the application.
- (2) If it appears to the Secretary of State—



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- (a) that the pipeline or facility that is the subject of the application can and should be modified so as to increase its capacity; or
  - (b) that the pipeline or facility that is the subject of the application can and should be modified by installing in it a junction or other apparatus through which a pipeline of the applicant's may be connected,
- then the Secretary of State may give the applicant and the owner of the pipeline or facility a notice in accordance with subsections (3) and (4).
- (3) A notice under subsection (2) must—
- (a) specify the modifications which the Secretary of State considers should be made to the pipeline or facility;
  - (b) specify the sums or the method for determining the sums which the Secretary of State considers should be paid to the owner by the applicant for the purpose of defraying the cost of the modifications;
  - (c) require the applicant to make, within the period specified for the purpose in the notice, arrangements which the Secretary of State considers appropriate to secure that those sums will be paid to the owner if the owner carries out the modifications or satisfies the Secretary of State that they will be carried out;
  - (d) require the owner, if the applicant makes those arrangements within that period, to carry out the modifications within a period specified for the purpose in the notice; and
  - (e) authorise the owner, if the Secretary of State is satisfied that the owner has carried out or will carry out the modifications, to recover those sums from the applicant.
- (4) A notice under subsection (2) may also contain provision for the purpose of ensuring that if the carrying out of the modifications prejudices any of the matters mentioned in subsection (9) of section 82 any person who suffers loss as a result may recover from the applicant payments by way of compensation, of such amounts as are determined in accordance with the notice.
- (5) If a notice under subsection (2) contains provision by virtue of subsection (4) the Secretary of State must give a copy of the notice to every person who has a right to have anything conveyed by the pipeline or processed by the facility.
- (6) Before giving a copy of a notice under subsection (5) the Secretary of State must—
- (a) remove from the copy any provision included in the notice by virtue of subsection (3)(b); and
  - (b) after giving the owner and the applicant an opportunity to be heard, remove from the copy any other provision included in the notice which the Secretary of State considers may prejudice the commercial interests of the owner or the applicant if not removed.
- (7) In considering whether to give a notice under subsection (2) the Secretary of State must—
- (a) take into account (so far as relevant) the matters mentioned in paragraphs (a) to (g) of subsection (7) of section 82;
  - (b) give the persons mentioned in subsection (8) an opportunity to be heard.
- (8) Those persons are—
- (a) the applicant and the owner;

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- (b) any person with a right to have anything conveyed by the pipeline or processed by the facility;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (9) If the Secretary of State gives a notice under subsection (2), section 82 has effect in relation to the pipeline or facility concerned as if references to the pipeline or facility were references to the pipeline or facility as it would be with the modifications specified in the notice.
- (10) In this section “owner”, in relation to a pipeline or facility, means any of the following—
- (a) a person in whom the pipeline or facility is vested; and
  - (b) a lessee and any person occupying or controlling the pipeline or facility.

**Modifications etc. (not altering text)**

- C5** S. 84 excluded by 1962 c. 58, s. 9(9)(b) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 paras. 2\(b\)\(3\)\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))
- C6** S. 84 excluded by 1962 c. 58, s. 9(9)(b) (as amended) (21.3.2012) by [Energy Act 2011 \(c. 16\)](#), s. 121(1), [Sch. 2 para. 3\(b\)](#); [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

**Commencement Information**

- I41** S. 84 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 85 Variation of notices under sections 82 and 84

- (1) The persons to whom a notice is given under subsection (11) of section 82 or subsection (2) of section 84 may agree to vary or set aside the notice.
- (2) The Secretary of State may vary a notice under subsection (11) of section 82 or subsection (2) of section 84 on the application of one of the persons to whom the notice was given.
- (3) But the Secretary of State may do so only if satisfied that the variation is necessary to resolve a dispute that has arisen in connection with the notice between the persons to whom it was given.
- (4) In considering whether to vary a notice the Secretary of State must give an opportunity to be heard to—
  - (a) the persons to whom the notice was given;
  - (b) any person with a right to have anything conveyed by the pipeline concerned or processed by the facility concerned;
  - (c) the Health and Safety Executive; and
  - (d) such other persons as the Secretary of State considers appropriate.
- (5) For the purposes of this section and section 86, a person is to be treated as having been given a notice if the person has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.

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#### Commencement Information

**I42** S. 85 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

### 86 Publication of notices and variations

- (1) Where the Secretary of State gives a notice under subsection (11) of section 82 or subsection (2) of section 84, the Secretary of State may—
  - (a) publish the notice or any part of it;
  - (b) publish a summary of the effect of the notice or any part of it.
- (2) Where the Secretary of State varies a notice in exercise of the power conferred by subsection (2) of section 85, the Secretary of State may—
  - (a) publish the variation;
  - (b) publish the notice, or any part of it, as varied;
  - (c) publish a summary of the effect of the variation.
- (3) Before publishing anything under this section the Secretary of State must give an opportunity to be heard to the persons to whom the notice was given and to such other persons as the Secretary of State considers appropriate.

#### Commencement Information

**I43** S. 86 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

### 87 Powers of Secretary of State to require information

- (1) Where the Secretary of State has reason to believe that a person has made or received an application of a kind mentioned in subsection (1) of section 82, the Secretary of State may by notice require the person to confirm whether or not that is the case.
- (2) The Secretary of State may by notice require a person who has made or received an application of a kind mentioned in subsection (1) of section 82 to provide the Secretary of State with specified information for the purpose of enabling the Secretary of State to decide—
  - (a) whether to exercise any function conferred on the Secretary of State by section 82, 83, or 84; and
  - (b) if so, how to exercise the function.
- (3) Where a person has applied to the Secretary of State under section 85 for a notice to be varied, the Secretary of State may by notice require any person within subsection (4) to provide the Secretary of State with specified information for the purpose of enabling the Secretary of State to decide—
  - (a) whether to vary the notice; and
  - (b) if so, how to vary the notice.
- (4) Those persons are—
  - (a) the person who applied for the notice to be varied;
  - (b) the other person to whom the notice was given;

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- (c) any person who has had assigned to him or her a right which is secured by the notice or a duty which is imposed by the notice.
- (5) The information that may be required under subsection (2) and (3) includes financial information.
- (6) The Secretary of State may not disclose any information obtained under this section unless—
  - (a) the person by or on behalf of whom the information was provided consents to the disclosure, or
  - (b) the disclosure is required by virtue of an obligation imposed on the Secretary of State by or under an enactment.
- (7) In this section “specified” means specified in a notice under subsection (2) or (3).

#### Commencement Information

**I44** S. 87 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 88 Enforcement

- (1) A person is guilty of an offence if, in circumstances falling within subsection (2), the person provides false information to the Secretary of State for the purpose of—
  - (a) inducing the Secretary of State to exercise or not to exercise any of the functions conferred on the Secretary of State by sections 82 to 85; or
  - (b) inducing the Secretary of State to exercise any of those functions in a particular way.
- (2) Those circumstances are that, at the time the information is provided, the person—
  - (a) knows or believes the information to be false; or
  - (b) is reckless as to whether or not it is false.
- (3) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding level five on the standard scale.
- (4) Proceedings for an offence under subsection (1) may not be instituted in England and Wales except—
  - (a) by the Secretary of State or by a person authorised to do so by the Secretary of State, or
  - (b) by or with the consent of the Director of Public Prosecutions.
- (5) Where an offence under subsection (1) is committed by a body corporate and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, an officer of the body corporate, that officer (as well as the body corporate) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.
- (6) Where an offence under subsection (1) is committed by a Scottish partnership and it is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner of the partnership, that partner (as well as the partnership) is guilty of the offence and is liable to be proceeded against and dealt with accordingly.

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- (7) The duty of a person to comply with a notice under subsection (11) of section 82 or subsection (2) of section 84 is a duty owed to any person who may be affected by a failure to comply with it.
- (8) Where a duty is owed by virtue of subsection (7) to any person, the duty may be enforced as if it were contained in a contract between that person and the person who owes the duty.
- (9) The duty of a person to comply with a notice under section 87 is enforceable by civil proceedings by the Secretary of State—
- (a) for an injunction or interdict;
  - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988; or
  - (c) for any other appropriate relief or remedy.
- (10) Civil proceedings under subsection (9) are to be brought—
- (a) in England and Wales, in the High Court, or
  - (b) in Scotland, in the Court of Session.
- (11) In this section—
- “officer”, in relation to a body corporate, means—
- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person purporting to act in any such capacity;
- “partner”, in relation to a Scottish partnership, includes any person who was purporting to act as a partner in the partnership.
- (12) In subsection (11) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.

#### Commencement Information

**I45** S. 88 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 89 Minor, consequential and supplemental provision

- (1) Schedule 2 contains minor and consequential amendments relating to this Chapter.
- (2) Before exercising any power conferred by sections 82 to 85 in respect of an upstream petroleum pipeline that is situated partly in a foreign sector of the continental shelf, the Secretary of State must consult the relevant authorities in the other country.
- (3) The use of a pipeline by any person in accordance with a right secured by a notice under subsection (11) of section 82 is not a contravention of section 14(1) of the Petroleum Act 1998.
- (4) Subsection (5) applies where—
  - (a) an authorisation has been issued under section 14 of the Petroleum Act 1998 (construction and use of controlled pipelines) for works for the construction of a pipeline;
  - (b) the authorisation contains a term of a kind mentioned in section 15(5) of that Act; and

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- (c) the proposed pipeline is to be a relevant upstream petroleum pipeline.
- (5) Before serving a notice under section 15(6) of the Petroleum Act 1998 on a person other than the holder of the authorisation, the Secretary of State must give that person an opportunity to make with respect to the proposed pipeline—
- (a) an application of a kind mentioned in subsection (1)(a) of section 82 of this Act, and
  - (b) if applicable, an application under subsection (4) of that section;
- and for the purposes of any such application the provisions of this Chapter have effect with the modifications in subsection (6).
- (6) The modification are that—
- (a) references to a pipeline are to the proposed pipeline as it would be once constructed in accordance with the terms of the authorisation;
  - (b) references to the owner of a pipeline are to the proposed owner of the proposed pipeline;
  - (c) section 84 is omitted.
- (7) In subsection (4)(c) “relevant upstream petroleum pipeline” means an upstream petroleum pipeline that is “relevant” for the purposes of subsection (1) of section 82.

#### Commencement Information

**I46** S. 89 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 90 Interpretation

- (1) In this Chapter—

“foreign sector of the continental shelf” means an area within which rights are exercisable with respect to the sea bed and subsoil and their natural resources by a country or territory outside the United Kingdom;

“gas” means any substance which is or, if it were in a gaseous state, would be gas within the meaning of Part 1 of the Gas Act 1986;

“gas processing facility” means any facility which—

- (a) carries out gas processing operations in relation to piped gas;
- (b) is operated otherwise than by a gas transporter; and
- (c) is not an LNG import or export facility (within the meaning of section 12 of the Gas Act 1995);

“oil processing facility” means any facility which carries out oil processing operations;

“payments” means payments in money or money's worth;

“petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998, and includes petroleum that has undergone any processing;

“piped gas” means gas which—

- (a) originated from a petroleum production project; and
- (b) has been conveyed only by means of pipes;

“pipeline” means a pipe or system of pipes for the conveyance of any thing;

“upstream petroleum pipeline” means a pipeline or one of a network of pipelines—

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- (a) which is operated or constructed as part of a petroleum production project and is not a carbon dioxide pipeline;
  - (b) which is used to convey petroleum from the site of one or more such projects—
    - (i) directly to premises, in order for that petroleum to be used at those premises for power generation or for an industrial process;
    - (ii) directly to a place outside Great Britain;
    - (iii) directly to a terminal; or
    - (iv) indirectly to a terminal by way of one or more other terminals, whether or not such intermediate terminals are of the same kind as the final terminal; or
  - (c) which is used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises.
- (2) For the purposes of this section—
- “carbon dioxide pipeline” means—
- (a) a pipeline used to convey carbon dioxide to a carbon dioxide storage site; or
  - (b) a pipeline which is not being used for any purpose but which is intended to be used to convey carbon dioxide to such a site;
- “carbon dioxide storage site” means a facility—
- (a) for the storage of carbon dioxide (with a view to its permanent disposal, or as an interim measure prior to its permanent disposal); and
  - (b) in respect of the use of which a person is required to have a licence under section 18 of the Energy Act 2008;
- “gas processing operation” means any of the following operations—
- (a) purifying, blending, odourising or compressing gas for the purpose of enabling it to be introduced into a pipeline system operated by a gas transporter or to be conveyed to an electricity generating station, a gas storage facility or any place outside Great Britain;
  - (b) removing from gas for that purpose any of its constituent gases, or separating from gas for that purpose any oil or water;
  - (c) determining the quantity or quality of gas which is or is to be so introduced, or so conveyed, whether generally or by or on behalf of a particular person,
  - (d) separating, purifying, blending, odourising or compressing gas for the purpose of—
    - (i) converting it into a form in which a purchaser is willing to accept delivery from a seller, or
    - (ii) enabling it to be loaded for conveyance to another place (whether inside or outside Great Britain); and
  - (e) loading gas—
    - (i) at a facility which carries out operations of a kind mentioned in paragraph (d), or
    - (ii) piped from such a facility,
 for the purpose of enabling the gas to be conveyed to another place (whether inside or outside Great Britain);

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“gas transporter” has the meaning given by section 7(1) of the Gas Act 1986;

“oil processing operations” means any of the following operations—

- (a) initial blending and such other treatment of petroleum as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
- (b) receiving stabilised crude oil and other hydrocarbon liquids piped from an oil processing facility carrying out operations of a kind mentioned in paragraph (a), or storing oil or other hydrocarbon liquids so received, prior to their conveyance to another place (whether inside or outside Great Britain);
- (c) loading stabilised crude oil and other hydrocarbon liquids piped from a facility carrying out operations of a kind mentioned in paragraph (a) or (b) for conveyance to another place (whether inside or outside Great Britain);

“petroleum production project” means a project carried out by virtue of a licence granted under section 3 of the Petroleum Act 1998 or section 2 of the Petroleum (Production) Act 1934, or an equivalent project in a foreign sector of the continental shelf, and includes such a project which is used for the storage of gas;

“terminal” includes—

- (a) facilities for such initial blending and other treatment as may be required to produce stabilised crude oil and other hydrocarbon liquids to the point at which a seller could reasonably make a delivery to a purchaser of such oil and liquids;
- (b) oil processing facilities;
- (c) gas processing facilities; and
- (d) a facility for the reception of gas prior to its conveyance to a place outside Great Britain.

#### Commencement Information

**I47** S. 90 in force at 21.3.2012 by [S.I. 2012/873](#), [art. 2\(b\)\(i\)](#) (with [art. 4](#))

## 91 Meaning of “associate” for the purposes of section 82

- (1) For the purposes of section 82(7)(d) and (9)(a) a person is an associate of another if—
  - (a) either or both of them is a body corporate, and
  - (b) one of them controls the other, or both are controlled by the same person or persons,and subsections (2) to (6) set out the circumstances in which one person (“A”) controls another (“B”).
- (2) Where B is a company, A controls B if A possesses or is entitled to acquire—
  - (a) one half or more of the issued share capital of B,
  - (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,



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- (c) such part of the issued share capital of B as would entitle A to one half or more of the amount distributed if the whole of the income of B were in fact distributed among the shareholders, or
  - (d) such rights as would, in the event of the winding up of B or in any other circumstances, entitle it to receive one half or more of the assets of B which would then be available for distribution among the shareholders.
- (3) Where B is a limited liability partnership, A controls B if A—
- (a) holds a majority of the voting rights in B,
  - (b) is a member of B and has a right to appoint or remove a majority of other members, or
  - (c) is a member of B and controls alone, or pursuant to an agreement with other members, a majority of the voting rights in B.
- (4) In subsection (3)(a) and (c) the references to “voting rights” are to the rights conferred on members in respect of their interests in a limited liability partnership to vote on those matters which are to be decided on by a vote of the members of the limited liability partnership.
- (5) In any case, A controls B if A has the power, directly or indirectly, to secure that the affairs of B are conducted in accordance with A's wishes.
- (6) In determining whether, by virtue of subsections (2) to (5), A controls B, A shall be taken to possess—
- (a) any rights and powers possessed by a person as nominee for it, and
  - (b) any rights and powers possessed by a body corporate which it controls (including rights and powers which such a body corporate would be taken to possess by virtue of this paragraph).

**Modifications etc. (not altering text)**

**C7** S. 91 applied by 1995 c. 45, s. 12(7) (as substituted (21.3.2012) by [Energy Act 2011 \(c. 16\), ss. 92\(12\), 121\(1\); S.I. 2012/873, art. 2\(b\)\(ii\)](#))

**Commencement Information**

**I48** S. 91 in force at 21.3.2012 by [S.I. 2012/873, art. 2\(b\)\(i\)](#) (with art. 4)

## CHAPTER 4

### DOWNSTREAM GAS PROCESSING FACILITIES

#### **92 Acquisition of rights to use gas processing facilities for downstream purposes**

- (1) Section 12 of the Gas Act 1995 (acquisition of rights to use gas processing facilities) is amended as follows.
- (2) In the heading at the end insert “ for downstream purposes ”.
- (3) For “the Secretary of State” (in each place those words occur) substitute “ the Authority ”.
- (4) In subsection (1)—

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- (a) in the words before paragraph (a), after “gas processing facility” insert “ which processes gas for a downstream purpose ”;
  - (b) in that paragraph for “on that person's behalf” substitute “ for such a purpose ”.
- (5) After subsection (1) insert—
- “(1ZA) At least two months before publishing those conditions or any changes to them under subsection (1), the owner of the facility must—
- (a) publish a draft of the proposed conditions or changes; and
  - (b) inform any person who has a right to have gas processed by the facility that the draft has been published.
- (1ZB) The owner of the facility must take into account any representations received about the proposed conditions or changes before publishing them, or a modified version of them, as final conditions or changes under subsection (1).”
- (6) In subsection (1B) for “on his behalf” substitute “ for a downstream purpose ”.
- (7) In subsection (1D)—
- (a) omit the “and” immediately preceding paragraph (c);
  - (b) after paragraph (c) insert “; and
  - (d) that the gas is to be processed for a downstream purpose”.
- (8) In subsection (1G) for “he” substitute “ it ”.
- (9) In subsection (2)(b) for “his” substitute “ its ”.
- (10) For subsections (5) and (5A) substitute—
- “(5) Sections 28 to 30F of the 1986 Act (enforcement of relevant requirements etc) apply in relation to the owner of a gas processing facility as if—
- (a) references to “a licence holder” were references to the owner of the facility; and
  - (b) references to a “relevant requirement” were references to a requirement imposed on the owner under this section.
- (5A) For the purposes of this section, gas is processed for “a downstream purpose” if it is processed with a view to its being put into a gas storage facility, an LNG import or export facility, a gas interconnector or a distribution system pipeline.”
- (11) In subsection (6)—
- (a) in the definition of “gas processing facility” for the words from “carries” to the end substitute “—
    - (a) carries out gas processing operations;
    - (b) is operated otherwise than by a gas transporter; and
    - (c) is not an LNG import or export facility;”;
  - (b) insert, in the appropriate place, the following definitions—
    - ““authorised transporter” has the same meaning as in Part 1 of the 1986 Act;”;
    - ““the Authority” means the Gas and Electricity Markets Authority;”;

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““distribution system operator” has the meaning given by Article 2(6) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC;”;

““distribution system pipeline” means a pipeline operated by an authorised transporter who is a distribution system operator;”;

““gas interconnector” has the same meaning as in Part 1 of the 1986 Act;”;

““gas storage facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for either or both of the following—

- (a) the storage in porous strata, or in cavities in strata, of gas which has been, or will be, conveyed in a pipeline system operated by the holder of a licence under section 7 or 7ZA of the 1986 Act;
- (b) the storage of liquid gas which, if regasified, would be suitable for conveyance through pipes to premises in accordance with a licence under section 7 of the 1986 Act;

but the reference in paragraph (b) to the storage of liquid gas does not include such temporary storage as is mentioned in the definition of “LNG import or export facility”;”;

““LNG import or export facility” means a facility in Great Britain (including the territorial sea adjacent to Great Britain and the sea in any area designated under section 1(7) of the Continental Shelf Act 1964) for—

- (a) the importation into Great Britain and regasification of liquid gas prior to its conveyance to a pipeline system operated by the holder of a licence under section 7 or section 7ZA of the 1986 Act, or the liquefaction of gas for the purpose of its export from Great Britain; and
- (b) any activity, including temporary storage of gas or liquid gas, which is necessary for that importation, regasification or liquefaction;”;

““storage”, in relation to liquid gas in a gas storage facility, includes any liquefaction of gas or regasification of liquid gas ancillary to the storage of liquid gas, and “stored”, in relation to liquid gas in a gas storage facility, shall be construed accordingly;”.

(12) For subsection (7) substitute—

“(7) Section 91 of the Energy Act 2011 (meaning of “associate”) applies for the purposes of subsection (3) of this section as it applies for the purposes of section 82(7)(d) and (9)(a) of that Act.”

#### Commencement Information

**I49** S. 92 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(ii)

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## CHAPTER 5

### SPECIAL ADMINISTRATION

#### *Special administration under the Energy Act 2004*

#### **93 Amendment of section 166 of the Energy Act 2004**

(1) Section 166 of the Energy Act 2004 (indemnities) is amended as follows.

(2) After subsection (3) insert—

“(3AA) As soon as practicable after agreeing to indemnify persons under this section, the Secretary of State must lay a statement of the agreement before Parliament.”

(3) After subsection (6) insert—

“(6A) Where a sum has been paid out by the Secretary of State in consequence of an indemnity agreed to under this section, the Secretary of State must lay a statement relating to that sum before Parliament—

- (a) as soon as practicable after the end of the financial year in which that sum is paid out; and
- (b) (except where subsection (4) does not apply in the case of the sum) as soon as practicable after the end of each subsequent relevant financial year.

(6B) In relation to a sum paid out in consequence of an indemnity, a financial year is a relevant financial year for the purposes of subsection (6A) unless—

- (a) before the beginning of that year, the whole of that sum has been repaid to the Secretary of State under subsection (4); and
- (b) the company in question is not at any time during that year subject to liability to pay interest on amounts that became due under that subsection in respect of that sum.”

#### *Special administration under this Chapter*

#### **94 Energy supply company administration orders**

(1) An energy supply company administration order (referred to in this Chapter as an “esc administration order”) is an order which—

- (a) is made by the court in relation to an energy supply company; and
- (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.

(2) The person appointed in relation to a company for the purposes of an esc administration order is the energy administrator of the company.

(3) The energy administrator of a company must manage its affairs, business and property, and exercise and perform all the powers and duties of an energy administrator, so as to achieve the objective set out in section 95.

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- (4) In relation to an esc administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only to its affairs and business so far as carried on in Great Britain and to its property in Great Britain.
- (5) In this Chapter—
- “energy supply company” means a company which is the holder of a relevant licence; and
- “relevant licence” means—
- (a) a licence granted under section 7A(1)(a) or (b) of the Gas Act 1986 to supply gas, or
  - (b) a licence granted under section 6(1)(d) of the Electricity Act 1989 to supply electricity.

## 95 Objective of an energy supply company administration

- (1) The objective of an energy supply company administration is to secure—
- (a) that energy supplies are continued at the lowest cost which it is reasonably practicable to incur; and
  - (b) that it becomes unnecessary, by one or both of the following means, for the esc administration order to remain in force for that purpose.
- (2) Those means are—
- (a) the rescue as a going concern of the company subject to the esc administration order; and
  - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern—
- (a) to another company, or
  - (b) as respects different parts of the undertaking of the company subject to the esc administration order, to two or more different companies,
- of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the energy supply company administration.
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the esc administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company; and
  - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of an energy supply company administration may be achieved by transfers falling within subsection (3) to the extent only that—
- (a) the rescue as a going concern of the company subject to the esc administration order is not reasonably practicable or is not reasonably practicable without such transfers;
  - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such transfers;
  - (c) such transfers would produce a result for the company's creditors as a whole that is better than the result that would be produced without them; or

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- (d) such transfers would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without them.

## **96 Application of certain provisions of the Energy Act 2004 in relation to esc administration orders**

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to an esc administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4).
- (2) In the application of those provisions generally—
  - (a) for “energy administration”, in each place where it occurs, substitute “energy supply company administration”;
  - (b) for “a protected energy company”, in each place where it occurs, substitute “an energy supply company”.
- (3) In the application of Schedule 20—
  - (a) in paragraph 32(d), for the words from “ “ “energy administration application”” to “Energy Act 2004” substitute “ “ “energy supply company administration application” means an application to the court for an energy supply company administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 96 of the Energy Act 2011”;
  - (b) in paragraph 32(e), for “section 155 of the Energy Act 2004” substitute “section 95 of the Energy Act 2011”;
  - (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 94(4) of the Energy Act 2011”;
  - (d) in paragraph 43, after “the Energy Act 2004” insert “and section 96 of the Energy Act 2011”;
  - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 96 of the Energy Act 2011”;
  - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 96 of the Energy Act 2011”;
  - (g) in paragraph 47, after “Part 1 of this Schedule” insert “and section 96 of the Energy Act 2011”.
- (4) In the application of Schedule 21—
  - (a) in paragraph 1(b), for “section 155(3)” substitute “section 95(3) of the Energy Act 2011”;
  - (b) in paragraph 12, for “section 155” substitute “section 95 of the Energy Act 2011”.
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)—
  - (a) insert, at the appropriate places, the following definitions—
    - ““energy supply company” has the meaning given by section 94(5) of the Energy Act 2011;”;

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““energy supply company administration order” has the meaning given by section 94(1) of the Energy Act 2011;”;

““energy supply company administration rules” means rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 96 of the Energy Act 2011;”;

““objective of the energy supply company administration” is to be construed in accordance with section 95 of the Energy Act 2011;”;

- (b) in the definition of “energy administrator” for “section 154(2)” substitute “section 94(2) of the Energy Act 2011 ”;
- (c) in the definition of “relevant licence” for “section 154(5)” substitute “section 94(5) of the Energy Act 2011 ”.

## **97 Conduct of administration, transfer schemes, etc**

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), after “Chapter”, in the second place where it appears, insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

## **98 Modifications of particular or standard conditions**

- (1) Where the Secretary of State considers it appropriate to do so in connection with the provision made by this Chapter, the Secretary of State may make—
  - (a) modifications of the conditions of a gas or electricity licence held by a particular person;
  - (b) modifications of the standard conditions of such licences of any type.
- (2) The power to make modifications under this section includes power to make incidental, consequential or transitional modifications.
- (3) Before making a modification under this section, the Secretary of State must consult—
  - (a) the holder of any licence being modified; and
  - (b) such other persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must publish every modification made under this section.
- (5) The publication must be in such manner as the Secretary of State considers appropriate.
- (6) A modification under subsection (1)(a) of part of a standard condition of a 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 Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (7) Where the Secretary of State makes modifications under subsection (1)(b) of the standard conditions of licences of any type, the Gas and Electricity Markets Authority must—
  - (a) make (as nearly as may be) the same modifications of those standard conditions for the purposes of their incorporation in licences of that type granted after that time; and
  - (b) publish the modifications in such manner as it considers appropriate.

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- (8) The Secretary of State's powers under this section are exercisable only during the eighteen months beginning with the commencement of this section.
- (9) In section 33(1) of the Utilities Act 2000 (standard conditions of generation, distribution and supply licences under Part 1 of the Electricity Act 1989), after “76” (as inserted by section 77(5) of this Act) insert “ or 98 ”.
- (10) In section 81(2) of the Utilities Act 2000 (standard conditions of transporter, supply and shipping licences under Part 1 of the Gas Act 1986), after “76” (as inserted by section 77(6) of this Act) insert “ or 98 ”.
- (11) In section 146(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Electricity Act 1989), for “or under this Act” substitute “ , under this Act or under section 98 of the Energy Act 2011 ”.
- (12) In section 150(5) of the Energy Act 2004 (standard conditions of interconnector licences under Part 1 of the Gas Act 1986), for “or under this Act” substitute “ , under this Act or under section 98 of the Energy Act 2011 ”.
- (13) Sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of gas licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (14) Sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the powers of the Secretary of State under this section with respect to holders of electricity licences as they apply in relation to functions of the Secretary of State under Part 1 of that Act.
- (15) In this section—
  - (a) references to a gas licence are to a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities relating to gas), and
  - (b) references to an electricity licence are to a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities relating to electricity).

## **99 Licence conditions to secure funding of energy supply company administration**

- (1) The modifications that may be made under section 98 include, in particular, modifications imposing conditions requiring the holder of the licence—
  - (a) so to modify the charges imposed by the licence holder for anything done by the licence holder in the carrying on of the licensed activities as to raise such amounts as may be determined by or under the conditions; and
  - (b) to pay the amounts so raised to such persons as may be so determined for the purpose of—
    - (i) their applying those amounts in making good any shortfall in the property available for meeting the expenses of an energy supply company administration; or
    - (ii) enabling those persons to secure that those amounts are so applied.
- (2) Those modifications may include modifications imposing on the licence holder an obligation to apply amounts paid to the licence holder in pursuance of conditions falling within subsection (1)(a) or (b) in making good any such shortfall.



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- (3) For the purposes of this section—
- (a) there is a shortfall in the property available for meeting the costs of an energy supply company administration if, in a case where a company is or has been subject to an energy supply company administration order, the property available (apart from conditions falling within subsection (1) or (2)) for meeting relevant debts is insufficient for meeting them; and
  - (b) amounts are applied in making good that shortfall if they are paid in or towards discharging so much of a relevant debt as cannot be met out of the property otherwise available for meeting relevant debts.
- (4) In this section “relevant debt” in relation to a case in which a company is or has been subject to an energy supply company administration order, means an obligation—
- (a) to make payments in respect of the expenses or remuneration of any person as the energy administrator of that company;
  - (b) to make a payment in discharge of a debt or liability of that company arising out of a contract entered into at a time when the order was in force by the person who at that time was the energy administrator of that company;
  - (c) to repay the whole or a part of a grant made to that company under section 165 of the Energy Act 2004 as applied by section 96 of this Act;
  - (d) to repay a loan made to the company under that section as so applied, or to pay interest on such a loan;
  - (e) to make a payment under section 166(4) of that Act as so applied; or
  - (f) to make a payment under section 167(5) of that Act as so applied.

## **100 Modifications under the Enterprise Act 2002**

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section.
- (2) Those sections are—
  - (a) sections 248 and 277 (amendments consequential on that Act); and
  - (b) section 254 (power to apply insolvency law to foreign companies).
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002) after “Chapter” insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

## **101 Power to make further modifications of insolvency legislation**

- (1) The power of the Secretary of State under paragraph 46 of Schedule 20 to the Energy Act 2004 (conduct of energy administration) to make modifications includes power to make such modifications as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter.
- (2) In paragraph 46 of that Schedule, after “Chapter” insert “ (including this Chapter as applied by section 96 of the Energy Act 2011) ”.

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## 102 Interpretation of Chapter 5

(1) In this Chapter—

“business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;

“company” means—

- (a) a company registered under the Companies Act 2006, or
- (b) an unregistered company;

“court”, in relation to a company, means the court—

- (a) having jurisdiction to wind up the company, or
- (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);

“energy administrator” has the meaning given by section 94(2) and is to be construed in accordance with subsection (2) of this section;

“energy supply company administration order” has the meaning given by section 94(1);

“energy supply company” has the meaning given by section 94(5);

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“non-GB company” means a company incorporated outside Great Britain;

“objective of the energy supply company administration” is to be construed in accordance with section 95;

“relevant licence” has the meaning given by section 94(5);

“subsidiary” and “wholly-owned subsidiary” have the meanings given by section 1159 of the Companies Act 2006;

“unregistered company” means a company that is not registered under the Companies Act 2006.

(2) In this Chapter references to the energy administrator of a company—

- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 96 of this Act to be the energy administrator of that company; and
- (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 96 of this Act.

## CHAPTER 6

### CONTINENTAL SHELF

## 103 Revocation etc of designations under Continental Shelf Act 1964

In section 1(7) of the Continental Shelf Act 1964 (power by Order in Council to designate an area as an area within which rights with respect to the sea bed etc are exercisable), for “revoke Orders for the purpose of consolidating them” substitute “revoke, amend or re-enact Orders”.

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## PART 3

### MEASURES FOR REDUCING CARBON EMISSIONS

#### *Offshore electricity*

#### **104 Offshore transmission and distribution of electricity: extension of time for licence modifications and property scheme applications**

- (1) In section 90 of the Energy Act 2004 (modification of licence conditions for offshore transmission and distribution of electricity), in each of subsections (3) and (8) (time periods for consulting on and making modifications) for “the commencement of this section” substitute “ the passing of the Energy Act 2011 ”.
- (2) In section 91 of the Energy Act 2004 (extension of electricity transmission licences offshore), in each of subsections (6) and (11) (time periods for consulting on and making modifications) for “the commencement of this section” substitute “ the passing of the Energy Act 2011 ”.
- (3) In Schedule 2A to the Electricity Act 1989 (property schemes in respect of licences for offshore transmission of electricity), in paragraph 5(5) (maximum possible period during which an application for a scheme may be made) for “7 years” substitute “ 16 years ”.

#### **Commencement Information**

**I50** S. 104 wholly in force at 18.12.2011; s. 104(1)(2) in force at Royal Assent and s. 104(3) in force at 18.12.2011 see s. 121(3)(h)(4)(c)

#### *Security of nuclear construction sites*

#### **105 Regulation of security of nuclear construction sites**

- (1) Section 77 of the Anti-terrorism, Crime and Security Act 2001 (regulation of security of civil nuclear industry) is amended as follows.
- (2) In subsection (1) (list of matters that may be regulated) after paragraph (c) insert—  
 “(cza) nuclear construction sites and equipment used or stored on such sites;”.
- (3) In subsection (7) after the definition of “equipment” insert—  
 ““nuclear construction site” means a site—  
 (a) on which works are being carried out with a view to its becoming a nuclear site used wholly or mainly for purposes other than defence purposes; and  
 (b) which is situated within 5 kilometres of an existing nuclear site.”

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## *Decommissioning*

### **106 Agreement about modifying decommissioning programme**

- (1) Section 46 of the Energy Act 2008 (approval of a decommissioning programme) is amended as follows.
- (2) After subsection (3) insert—
  - “(3A) When approving a programme the Secretary of State may agree to exercise, or not to exercise, the section 48 power—
    - (a) in a particular manner;
    - (b) within a particular period.
  - (3B) An agreement under subsection (3A) may subsequently be amended by the Secretary of State and the other party to the agreement.
  - (3C) The Secretary of State may not make such an agreement or amend such an agreement unless satisfied that the agreement (or the agreement as amended) includes adequate provision for the modification of the programme in the event that the provision made by it for the technical matters (including the financing of the designated technical matters) ceases to be prudent.
  - (3D) Provision in such an agreement (including the provision mentioned in subsection (3C)) may include provision—
    - (a) for a determination by a third party in relation to a relevant matter specified in the agreement, and
    - (b) for the Secretary of State to be bound by such a determination.
  - (3E) A “relevant matter” is a matter relating to the provision made by the programme for the technical matters.
  - (3F) Subsections (3A) to (3D) apply notwithstanding that the agreement or amendment fetters the Secretary of State's discretion.
  - (3G) In subsection (3A) “section 48 power” means the power of the Secretary of State under section 48 to propose a modification of the programme or a modification of the conditions to which the approval of the programme is subject.”
- (3) In subsection (4) for “(3)” substitute “(3B)”.

### **107 Abandonment: infrastructure converted for CCS demonstration projects**

- (1) The Energy Act 2008 is amended as follows.
- (2) After section 30 insert—
  - “**30A Installations converted for CCS demonstration projects**
  - (1) The Secretary of State may by order designate an installation as an eligible CCS installation.
  - (2) But an order may not be made under subsection (1) in relation to—

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- (a) a carbon storage installation established or maintained under a licence granted by the Scottish Ministers, or
  - (b) any other installation established or maintained wholly or partly in Scotland.
- (3) An order under subsection (1) ceases to have effect if the installation in relation to which it is made becomes an installation within subsection (2)(a).
- (4) An eligible CCS installation qualifies for change of use relief if—
  - (a) the installation is or has been used as part of a CCS demonstration project, and
  - (b) the trigger event has occurred in relation to the installation at a time when the installation was so used (whether before or after it was designated under this section).
- (5) The trigger event occurs—
  - (a) in relation to an installation used for the injection of captured carbon dioxide into a carbon storage facility as part of a CCS demonstration project, when captured carbon dioxide is first present at the installation, and
  - (b) in relation to an installation used as part of a CCS demonstration project for any other purpose, when captured carbon dioxide is first present at another installation used as mentioned in paragraph (a) as part of the same project.
- (6) Where an eligible CCS installation qualifies for change of use relief—
  - (a) an abandonment programme notice must not be served on a person who is within section 30(1) of the 1998 Act only because one or more of subsections (7) to (9) applies in relation to the person (but this does not affect the validity of a notice served on any such person before the installation qualified for change of use relief), and
  - (b) a proposal must not be made under section 34(1)(b) of the 1998 Act if the effect of the proposal (if implemented) would be to impose an abandonment liability on a person who is within section 34(2)(a) of the 1998 Act only because one or more of subsections (7) to (10) applies in relation to the person.
- (7) This subsection applies in relation to a person if—
  - (a) the person is within paragraph (b) of section 30(1) of the 1998 Act in relation to the installation only by virtue of the fact that the person had a right mentioned in section 30(5)(a) of that Act when an activity mentioned in section 30(6) of that Act was last carried on from, by means of or on the installation, and
  - (b) any such activity was last so carried on before the trigger event occurred in relation to the installation.
- (8) This subsection applies in relation to a person if—
  - (a) the person is within paragraph (ba) of section 30(1) of the 1998 Act in relation to the installation, and
  - (b) the transfer mentioned in sub-paragraph (i) of that paragraph took place before the trigger event occurred in relation to the installation.

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- (9) This subsection applies in relation to a person if the person is within paragraph (e) of section 30(1) of the 1998 Act only by virtue of being associated with a body corporate which is within subsection (7) or (8).
- (10) This subsection applies in relation to a person if the person has been within any of paragraphs (a), (b), (c), (d) or (e) of section 30(1) of the 1998 Act in relation to the installation, but only at a time—
- (a) when the installation was an offshore installation (within the meaning given by section 44 of the 1998 Act), and
  - (b) before the trigger event occurred in relation to the installation.
- (11) The power conferred by subsection (1) does not include a power to revoke an order made under that subsection.
- (12) In this section—
- “abandonment liability”, in relation to an installation, means a duty to secure that an abandonment programme for the installation is carried out;
  - “abandonment programme”, in relation to an installation, means a programme in respect of the installation approved, or having effect as if approved, by the Secretary of State under section 32 of the 1998 Act;
  - “abandonment programme notice” means a notice served under section 29(1) of the 1998 Act;
  - “captured carbon dioxide” means carbon dioxide that has been produced by, or in connection with, commercial electricity generation and captured with a view to its disposal by way of permanent storage;
  - “carbon dioxide”, “CCS demonstration project” and “commercial electricity generation” have the same meanings as in Part 1 of the Energy Act 2010 (see section 7 of that Act);
  - “carbon storage facility” has the same meaning as in section 20;
  - “Scotland” has the same meaning as in the Scotland Act 1998 (see section 126(1) of that Act).
- (13) Section 30(8) to (9) of the 1998 Act (when one body corporate is associated with another) apply for the purposes of this section.

### **30B Submarine pipelines converted for CCS demonstration projects**

- (1) The Secretary of State may by order designate a submarine pipeline as an eligible CCS pipeline.
- (2) An eligible CCS pipeline qualifies for change of use relief if—
- (a) the pipeline is or has been used as part of a CCS demonstration project for a purpose other than the transport of petroleum, and
  - (b) the trigger event has occurred in relation to the pipeline at a time when the pipeline was so used (whether before or after it was designated under this section).
- (3) The trigger event—

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- (a) in relation to a pipeline used to transport captured carbon dioxide as part of a CCS demonstration project, occurs when captured carbon dioxide is first present in the pipeline, and
  - (b) in relation to a pipeline used as part of a CCS demonstration project for any other purpose, occurs—
    - (i) when captured carbon dioxide is first present in another pipeline used as part of the same project, or
    - (ii) if earlier, when captured carbon dioxide is first present at an installation used as part of the same project for the injection of captured carbon dioxide into a carbon storage facility.
- (4) Where an eligible CCS pipeline qualifies for change of use relief, a proposal must not be made under section 34(1)(b) of the 1998 Act if the effect of the proposal (if implemented) would be to impose an abandonment liability on a person who is within section 34(2)(b) of the 1998 Act only because subsection (5) applies in relation to the person.
- (5) This subsection applies in relation to a person if the person has been within any of paragraphs (a) to (c) of section 30(2) of the 1998 Act in relation to the pipeline, but only at a time—
- (a) when the pipeline was used solely for activities other than activities connected with any mentioned in section 17(2)(a), (b) or (c), and
  - (b) before the trigger event occurred in relation to the pipeline.
- (6) The power conferred by subsection (1) does not include a power to revoke an order made under that subsection.
- (7) In this section—
- “abandonment liability”, in relation to a submarine pipeline, is a duty to secure that an abandonment programme for the pipeline is carried out;
  - “abandonment programme”, in relation to a submarine pipeline, means a programme in respect of the pipeline approved, or having effect as if approved, by the Secretary of State under section 32 of the 1998 Act;
  - “captured carbon dioxide” and “CCS demonstration project” have the same meanings as in section 30A;
  - “carbon storage facility” has the same meaning as in section 20;
  - “petroleum” has the same meaning as in Part 1 of the 1998 Act (see section 1 of that Act) and includes petroleum that has undergone any processing;
  - “submarine pipeline” has the same meaning as in Part 4 of the Petroleum Act 1998 (see section 45 of that Act).”
- (3) In the cross heading before section 30, for “installations” substitute “ infrastructure ”.
- (4) In section 30 (abandonment of installations)—
- (a) in subsection (1) (application of Part 4 of Petroleum Act 1998 in relation to abandonment of carbon storage installations)—
    - (i) for “ “the 1998 Act” ” substitute “ referred to in this section and sections 30A and 30B as “the 1998 Act” ”, and
    - (ii) at the end insert “ and section 30A ”,

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- (b) after subsection (4) (power to make regulations modifying Part 4 of the 1998 Act in its application to carbon storage installations) insert—
    - “(4A) The power in subsection (4) is subject to section 30A.”, and
  - (c) in subsection (5) (meaning of “carbon storage installation”) after “this section” insert “ and section 30A ”.
- (5) In section 105(2) (parliamentary control of subordinate legislation), after paragraph (a) insert—
- “(aa) an order which contains provision made under section 30A or 30B only (powers to designate installations and submarine pipelines as eligible CCS installations and eligible CCS pipelines);”.

### *Carbon dioxide pipelines*

## **108 Carbon dioxide pipelines: powers of compulsory acquisition**

- (1) The Pipe-lines Act 1962 is amended as follows.
- (2) In section 12 (orders for compulsory acquisition of rights over land for pipe-line construction)—
  - (a) in subsection (1), for “the next following section” substitute “ section 13 ”;
  - (b) in subsections (2), (4), (5)(a) and (b), (5A) (in both places), (6) and (7), after “a compulsory rights order” insert “ under this section ”;
  - (c) in subsection (3), after “compulsory rights orders” insert “ under this section ”.
- (3) After section 12 insert—

### *“Pipe-lines for Conveying Carbon Dioxide: Compulsory Acquisition of Rights over Land*

#### **12A Orders for compulsory acquisition of rights over land: pipe-lines for conveying carbon dioxide**

- (1) This section applies in relation to a pipe-line (or a length of a pipe-line) that is intended to be converted into a pipe-line (or length) used for conveying carbon dioxide.
- (2) The owner of the pipe-line may apply to the Secretary of State for an order under subsection (3) in relation to land in which the pipe-line (or a length of the pipe-line) is situated.
- (3) An order under this subsection is an order authorising the owner of the pipe-line to do one or more of the following—
  - (a) to use the pipe-line (or length of the pipe-line) in the land described in the order to convey carbon dioxide;
  - (b) to execute pipe-line works in the land which are necessary in consequence of the presence of the pipe-line (or length) in the land;
  - (c) to execute pipe-line works in the land to enable the pipe-line (or length) to be used to convey carbon dioxide or in consequence of its use to convey carbon dioxide;



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- (d) to exercise, in relation to the pipe-line (or length), such of the rights mentioned in Schedule 4 as may be specified in the order.

An order under this subsection is referred to in this Act as a “compulsory rights order”.

- (4) A compulsory rights order under this section may be made subject to conditions (see section 13).
- (5) On receiving an application under subsection (2), the Secretary of State may grant or refuse the application.
- (6) Part 1 of Schedule 2, as modified by Part 2 of that Schedule, has effect in relation to applications for compulsory rights orders under this section.
- (7) A compulsory rights order under this section enures for the benefit of the owner for the time being of the pipe-line.
- (8) The Secretary of State may by order revoke a compulsory rights order under this section, in whole or in part, if—
- (a) the pipe-line (or length of the pipe-line) is diverted from the land described in the order,
  - (b) the pipe-line (or length) is abandoned,
  - (c) the pipe-line (or length) ceases to be used to convey carbon dioxide, or
  - (d) the owner of the pipe-line makes an application for the revocation of the order.
- (9) A compulsory rights order under this section does not affect any right over the land described in the order that would not have been affected had the land been compulsorily purchased by virtue of a compulsory purchase order.
- (10) A compulsory rights order under this section does not authorise the disregard of any enactment or of any instrument having effect by virtue of any enactment.
- (11) A compulsory rights order under this section is not to be taken to confer a right of support for the pipeline (or length of pipeline).
- (12) A compulsory rights order under this section is to be subject to special parliamentary procedure.
- (13) For the purposes of this section, “carbon dioxide” includes any substance consisting primarily of carbon dioxide.

Compulsory Rights Orders under Sections 12 and 12A: Supplementary Provisions  
 ”.

- (4) In section 66 (general interpretation provisions), in subsection (1), in the definition of “compulsory rights order”, for “subsection (1) of section twelve” substitute “ sections 12(1) and 12A(3) ”.
- (5) In Schedule 2—
- (a) in the shoulder reference, after “12,” insert “ 12A, ”;
  - (b) in paragraph 10(1), for “subsection (3) of section twelve of this Act” substitute “ sections 12(3) and 12A(6) ”.

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- (6) In Schedule 4, in the shoulder reference, for “Section 12” substitute “ Sections 12 and 12A ”.

#### Commencement Information

**I51** S. 108 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(iii)

PROSPECTIVE

### *Carbon emissions reduction*

#### **109 Contribution to carbon budgeting under the Climate Change Act 2008**

- (1) The Secretary of State must prepare and publish an annual report on the extent to which—
- (a) green deal plans under Chapter 1 of Part 1, and
  - (b) the energy company obligations provisions,
- have contributed to the Secretary of State fulfilling the duty under section 4(1)(b) of the Climate Change Act 2008 (carbon budgeting).
- (2) The “energy company obligations provisions” means—
- (a) sections 33BC and 33BD of the Gas Act 1986 and sections 41A and 41B of the Electricity Act 1989 (promotion of reductions in carbon emissions and home-heating costs),
  - (b) sections 103 and 103A of the Utilities Act 2000 (overall carbon emissions and home-heating cost reduction targets), and
  - (c) section 103B of the Utilities Act 2000 (Secretary of State's power to require information about carbon emissions and home-heating cost reduction targets).
- (3) The first report under this section must be published before the end of 2014.
- (4) The Secretary of State must lay before Parliament a copy of each report under this section.

#### **110 Energy efficiency aim**

- (1) The Secretary of State must take such action as he considers appropriate to improve the energy efficiency of residential accommodation in England so as to contribute to the Secretary of State fulfilling the duty under section 1(1) of the Climate Change Act 2008 (reduction of net UK carbon account by 2050).
- (2) In subsection (1) “residential accommodation” has the meaning given by section 1 of the Home Energy Conservation Act 1995.
- (3) Section 2 of the Sustainable Energy Act 2003 (energy efficiency of residential accommodation) ceases to have effect.
- (4) In section 9 of the Sustainable Energy Act 2003 (citation, extent and commencement), in subsections (3) and (5) leave out “2”.

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### *Electricity from renewable sources*

#### **111 Adjustment of electricity transmission charges**

In section 185(11) of the Energy Act 2004 (areas suitable for renewable electricity generation: end date for schemes adjusting transmission charges) for “2024” substitute “2034”.

#### **112 Electricity from renewable sources: National Park authorities and Broads Authority**

- (1) This section applies to a body which is a National Park authority or the Broads Authority.
- (2) The body may—
  - (a) produce electricity from a renewable source;
  - (b) establish and operate generating stations and other installations for the purpose of producing electricity from a renewable source;
  - (c) make grants or loans to enable other persons to do anything which the body may do by virtue of paragraph (a) or (b);
  - (d) use, sell or otherwise dispose of electricity produced by virtue of the powers conferred by this section.
- (3) A “renewable source” is—
  - (a) in England and Wales, a source listed in regulation 2 of the Sale of Electricity by Local Authorities (England and Wales) Regulations 2010 (S.I. 2010/1910);
  - (b) in Scotland, a source listed in regulation 2 of the Sale of Electricity by Local Authorities (Scotland) Regulations 2010 (S.I. 2010/1908).
- (4) Any regulations which—
  - (a) are made in exercise of the power conferred by section 11(3) of the Local Government (Miscellaneous Provisions) Act 1976 (power to prescribe the circumstances in which local authorities may sell electricity), and
  - (b) amend, revoke or re-enact regulation 2 of the Sale of Electricity by Local Authorities (England and Wales) Regulations 2010,
 may amend subsection (3)(a) for the purpose of providing what is a “renewable source” in England and Wales.
- (5) Any regulations which—
  - (a) are made in exercise of the power conferred by section 170A(3) of the Local Government (Scotland) Act 1973 (power to prescribe the circumstances in which local authorities may sell electricity), and
  - (b) amend, revoke or re-enact regulation 2 of the Sale of Electricity by Local Authorities (Scotland) Regulations 2010,
 may amend subsection (3)(b) for the purpose of providing what is a “renewable source” in Scotland.
- (6) Nothing in this section—
  - (a) exempts a body from the requirements of Part 1 of the Electricity Act 1989, or
  - (b) affects what a body has power to do apart from this section.

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### *Northern Ireland: renewable heat incentives*

## **113 Renewable heat incentives in Northern Ireland**

- (1) The Department of Enterprise, Trade and Investment may make regulations—
- (a) establishing a scheme to facilitate and encourage renewable generation of heat in Northern Ireland, and
  - (b) about the administration and financing of the scheme.
- (2) Regulations under this section may, in particular—
- (a) make provision for the Department or NIAUR to make payments, or to require designated fossil fuel suppliers to make payments, in specified circumstances, to—
    - (i) the owner of plant used or intended to be used for the renewable generation of heat, whether or not the owner is also operating or intending to operate the plant;
    - (ii) a producer of biogas or biomethane;
    - (iii) a producer of biofuel for generating heat;
  - (b) make provision about the calculation of such payments;
  - (c) make provision about the circumstances in which such payments may be recovered;
  - (d) require designated fossil fuel suppliers to provide specified information to the Department or NIAUR;
  - (e) make provision for payments to fossil fuel suppliers in specified circumstances;
  - (f) make provision about the enforcement of obligations imposed by or by virtue of the regulations (which may include a power for the Department or NIAUR to impose financial penalties);
  - (g) confer functions on the Department or NIAUR, or both.
- (3) In this section—
- “biofuel” means liquid or gaseous fuel which is produced wholly from biomass;
- “biogas” means gas produced by the anaerobic or thermal conversion of biomass;
- “biomass” means material, other than fossil fuel or peat, which is, or is derived directly or indirectly from, plant matter, animal matter, fungi or algae;
- “biomethane” means biogas which is suitable for conveyance through pipes to premises in accordance with a licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) (licences to convey gas);
- “the Department” means the Department of Enterprise, Trade and Investment;
- “designated fossil fuel suppliers” means—
- (a) if the regulations so provide, a specified class of fossil fuel suppliers, and
  - (b) in any other case, all fossil fuel suppliers;
- “fossil fuel” means—
- (a) coal;
  - (b) lignite;

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

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- (c) natural gas (within the meaning of the Energy Act 1976);
  - (d) crude liquid petroleum;
  - (e) petroleum products (within the meaning of that Act);
  - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e);
- “fossil fuel supplier” means a person who supplies fossil fuel to consumers for the purpose of generating heat;
- “functions” includes powers and duties;
- “modify” includes amend, add to or repeal;
- “NIAUR” means the Northern Ireland Authority for Utility Regulation;
- “owner”, in relation to any plant which is the subject of a hire purchase agreement, a conditional sale agreement or any agreement of a similar nature, means the person in possession of the plant under that agreement;
- “plant” includes any equipment, apparatus or appliance;
- “renewable generation of heat” means the generation of heat by means of a source of energy or technology mentioned in subsection (4).
- (4) The sources of energy and technologies are—
- (a) biomass;
  - (b) biofuels;
  - (c) fuel cells;
  - (d) water (including waves and tides);
  - (e) solar power;
  - (f) geothermal sources;
  - (g) heat from air, water or the ground;
  - (h) combined heat and power systems (but only if the system's source of energy is a renewable source within the meaning given by Article 55F of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)));
  - (i) biogas.
- (5) The Department may by regulations—
- (a) modify the list of sources of energy and technologies in subsection (4);
  - (b) modify the definition of “biofuel”, “biogas” or “biomass” in subsection (3).
- (6) The Department may by regulations make provision, for the purposes of subsection (2) (a)(iii) and the definition of “fossil fuel supplier”, specifying that particular activities do or do not constitute generating heat.
- (7) Any power to make regulations under this section is to be exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) Regulations under this section may not be made unless a draft of the regulations has been laid before, and approved by a resolution of, the Northern Ireland Assembly.
- (9) Regulations under this section may—
- (a) provide for a person to exercise a discretion in dealing with any matter;
  - (b) include incidental, supplementary and consequential provision;
  - (c) make transitory or transitional provisions or savings;

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- (d) make provision generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as conditions specified in the regulations are satisfied);
- (e) make different provision for different cases or circumstances or for different purposes.

#### **114 Power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113**

- (1) GEMA and a Northern Ireland authority may enter into arrangements for GEMA to act on behalf of the Northern Ireland authority for, or in connection with, the carrying out of any functions that may be conferred on the Northern Ireland authority under, or for the purposes of, any scheme that may be established, under section 113.
- (2) In this section—
  - “GEMA” means the Gas and Electricity Markets Authority;
  - “Northern Ireland authority” means—
    - (a) the Department of Enterprise, Trade and Investment, or
    - (b) the Northern Ireland Authority for Utility Regulation.

VALID FROM 26/03/2015

### **PART 4**

#### **COAL AUTHORITY**

#### **115 Additional powers of the Coal Authority: England and Wales**

- (1) After section 4C of the Coal Industry Act 1994 insert—

##### **“4CA Further powers relating to subsidence and water discharge**

- (1) The Authority may take such action as it considers appropriate (if any)—
  - (a) with respect to subsidence arising otherwise than in connection with coal-mining;
  - (b) for the purpose of preventing, or mitigating the effect of, the discharge of water other than from a coal mine into or on to any land or into any controlled waters.
- (2) The powers conferred on the Authority by subsection (1) do not affect any other function of the Authority.”

- (2) In section 4A of that Act (power of the Coal Authority with respect to coal mine water discharge), in subsection (2), for “and 4C” substitute “, 4C and 4CA ”.

#### **116 Additional powers of the Coal Authority: Scotland**

- (1) After section 4F of the Coal Industry Act 1994 insert—

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**“4G Further powers relating to subsidence and water discharge:  
 Scotland**

- (1) The Authority may take such action as it considers appropriate (if any)—
- (a) with respect to subsidence arising otherwise than in connection with coal-mining;
  - (b) for the purpose of preventing, or mitigating the effect of, the discharge of water other than from a coal mine into or on to any land or into the water environment.
- (2) The powers conferred on the Authority by subsection (1) do not affect any other function of the Authority.”
- (2) In section 4D of that Act (power of the Coal Authority with respect to coal mine water discharge in Scotland), in subsection (2), for “and 4F” substitute “, 4F and 4G”.

**PART 5**

MISCELLANEOUS AND GENERAL

*Miscellaneous*

PROSPECTIVE

**117 Amendment of section 137 of the Energy Act 2004**

In section 137(3) of the Energy Act 2004 (standard conditions of transmission licences under Part 1 of the Electricity Act 1989)—

- (a) in paragraph (a) omit “or”, and
- (b) after paragraph (b) insert—
  - “(c) under the Energy Act 2008,
  - (d) under the Energy Act 2010, or
  - (e) under the Energy Act 2011,”.

**118 Amendment and repeal of measures relating to home energy efficiency**

- (1) The Home Energy Conservation Act 1995—
- (a) ceases to have effect in Scotland;
  - (b) ceases to apply in relation to energy conservation authorities in Wales.
- (2) In section 1 of that Act (interpretation) in the definition of “energy conservation measures” after “promotion,” insert “ any available financial assistance, ”.
- (3) In section 1 of the Sustainable Energy Act 2003 (annual report on progress towards sustainable energy aims)—
- (a) subsection (1)(e) and the “and” immediately preceding it cease to have effect, and

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- (b) subsection (1AA) ceases to have effect.
- (4) In section 4 of that Act (energy efficiency of residential accommodation: energy conservation authorities) subsection (13)(b) ceases to have effect.
- (5) Section 217 of the Housing Act 2004 (energy efficiency of residential accommodation in England) ceases to have effect.

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**Commencement Information**

**I52** S. 118 in force at 21.3.2012 by S.I. 2012/873, art. 2(c)

*General*

**119 Consultation**

A requirement for the Secretary of State to consult which arises under or by virtue of this Act may be satisfied by consultation before, as well as consultation after, the passing of this Act.

**120 Extent**

- (1) Subject to subsections (2) to (6), this Act extends to England and Wales and Scotland only.
- (2) The following provisions extend to England and Wales only—
  - (a) section 9 (documents containing information about green deal plans: England and Wales),
  - (b) section 14(3) to (5) (acknowledgment of green deal plan in respect of property in England or Wales),
  - (c) section 15(3) (further provision made in regulations for acknowledgment of such a plan),
  - (d) sections 42 to 53 (private rented sector: England and Wales),
  - (e) section 74 (access to register of energy performance certificates etc: England and Wales),
  - (f) section 110 (energy efficiency aim), and
  - (g) section 115 (additional powers of the Coal Authority: England and Wales).
- (3) The following provisions extend to Scotland only—
  - (a) section 10 (documents containing information about green deal plans: Scotland),
  - (b) section 14(6) to (8) (acknowledgment of green deal plan in respect of property in Scotland),
  - (c) section 15(4) (further provision made in regulations for acknowledgment of such a plan),
  - (d) section 35(6) (green deal appeals: revocation or amendment of delegated legislation by Scottish Ministers),
  - (e) sections 54 to 65 (private rented sector: Scotland),
  - (f) section 75 (access to register of energy performance certificates etc: Scotland), and



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- (g) section 116 (additional powers of the Coal Authority: Scotland).
- (4) Section 113 (renewable heat incentives in Northern Ireland) extends to Northern Ireland only.
- (5) Section 114 (power for Gas and Electricity Markets Authority to act on behalf of Northern Ireland authority in connection with scheme under section 113) extends to England and Wales, Scotland and Northern Ireland.
- (6) Subject to section 118(1) and subsection (7) below, an amendment or repeal of an enactment has the same extent as the enactment amended or repealed.
- (7) The amendments made by sections 25 to 29 (green deal: modifying consumer credit legislation) extend to England and Wales and Scotland only.

## 121 Commencement

- (1) The provisions of this Act come into force on such day as the Secretary of State may by order made by statutory instrument appoint, subject to subsections (2) to (5).
- (2) The following provisions come into force on such day as the Scottish Ministers may by order appoint—
  - (a) section 10 (documents containing information about green deal plans: Scotland);
  - (b) section 14(6) to (8) (acknowledgment of green deal plan in respect of property in Scotland);
  - (c) section 15(4) (further provision made in regulations for acknowledgment of such a plan);
  - (d) section 35(6) (green deal appeals: revocation or amendment of delegated legislation by Scottish Ministers);
  - (e) sections 54 to 65 (private rented sector: Scotland);
  - (f) section 75 (access to register of energy performance certificates etc: Scotland).
- (3) The following provisions come into force at the end of the period of two months beginning with the day on which this Act is passed—
  - (a) sections 66 to 72 (reducing carbon emissions and home-heating costs);
  - (b) section 73 (smart meters);
  - (c) section 74 (access to register of energy performance certificates etc: England and Wales);
  - (d) sections 76 to 78 (information about tariffs);
  - (e) sections 79 and 80 (security of electricity supply);
  - (f) sections 93 to 102 (special administration);
  - (g) section 103 (designations under Continental Shelf Act 1964);
  - (h) subsection (3) of section 104 (offshore transmission and distribution of electricity);
  - (i) section 105 (regulation of security of nuclear construction sites);
  - (j) section 106 (agreement about modifying decommissioning programme);
  - (k) section 107 (abandonment: infrastructure converted for CCS demonstration projects);
  - (l) section 111 (adjustment of electricity transmission charges);

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- (m) section 112 (electricity from renewable sources: National Park authorities and Broads Authority);
  - (n) sections 113 and 114 (renewable heat incentives in Northern Ireland).
- (4) The following provisions come into force on the day on which this Act is passed—
- (a) section 37 (preparatory expenditure: framework regulations);
  - (b) section 81 (modification of the Uniform Network Code);
  - (c) subsections (1) and (2) of section 104 (offshore transmission and distribution of electricity);
  - (d) sections 119 and 120, this section and section 122 (general provisions).
- (5) Schedule 1 (reducing carbon emissions and home-heating costs: minor and consequential amendments) comes into force as follows—
- (a) paragraphs 1, 2, 7, 8(1), (2)(a), (3)(a) and (4) and 9 come into force at the end of the period of two months beginning with the day on which this Act is passed;
  - (b) paragraphs 4 and 8(2)(b), (3)(b) and (5) come into force on 1 January 2013;
  - (c) paragraphs 3, 5 and 6 come into force on 6 April 2014.
- (6) An order made by the Secretary of State or the Scottish Ministers under this section may—
- (a) appoint different days for different purposes;
  - (b) make transitional provision and savings.

## 122 Short title

This Act may be cited as the Energy Act 2011.

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

## SCHEDULES

### SCHEDULE 1

Section 72

#### REDUCING CARBON EMISSIONS AND HOME-HEATING COSTS: MINOR AND CONSEQUENTIAL AMENDMENTS

##### *Gas Act 1986*

- 1 In section 33DA(1)(a) of the Gas Act 1986 (publication of statistical information about standards of performance) after sub-paragraph (ii) insert—  
 “(iii) home-heating cost reduction obligations imposed by order under section 33BD; and”.

##### *Electricity Act 1989*

- 2 The Electricity Act 1989 is amended in accordance with paragraphs 3 to 6.

VALID FROM 06/04/2014

- 3 In section 6(9) (definition of “electricity distributor”, “electricity generator” and “electricity supplier”) omit the definition of “electricity generator”.
- 4 (1) Section 41A (promotion of reductions in carbon emissions: electricity generators, electricity distributors and electricity suppliers) is amended as follows.
- (2) In the heading omit “electricity generators.”.
- (3) In subsection (1)—
- (a) omit paragraph (za) (power to impose carbon emission reduction obligation on electricity generators);
- (b) in the words after paragraph (b) omit “generator.”.
- (4) In subsection (3) omit “electricity generators.”.
- (5) In subsection (4) omit paragraph (a) (duty to carry out functions under the section in a way that does not inhibit competition between electricity generators).
- (6) In subsection (5)—
- (a) in paragraph (a) omit “electricity generators.”;
- (b) in paragraph (d) omit “generators.”;
- (c) in paragraph (f) omit “generators.”.
- (7) In subsection (6) omit “generator.”.
- (8) In subsection (7)(d) omit “electricity generator.”.
- (9) In subsection (8)(d) omit “generators.”.

(10) In subsection (11) omit “electricity generators,”.

**Commencement Information**

**I53** Sch. 1 para. 4 in force at 1.1.2013, see s. 121(5)(b)

VALID FROM 06/04/2014

- 5 (1) Section 42AA (publication of statistical information about standards of performance) is amended as follows.
- (2) In paragraph (a) of subsection (1)—
- (a) omit “electricity generators,”;
  - (b) after sub-paragraph (ii) insert—  
“(iii) home-heating cost reduction obligations imposed by order under section 41B; and”.
- (3) In paragraph (b) of subsection (1) omit “generators,”.
- (4) In subsection (2) omit “electricity generators,”.

VALID FROM 06/04/2014

- 6 In section 64(1) (interpretation etc of Part 1) in the definition of “electricity distributor”, “electricity generator” and “electricity supplier” omit “, “electricity generator””.

*Utilities Act 2000*

- 7 The Utilities Act 2000 is amended in accordance with paragraphs 8 and 9.
- 8 (1) Section 103 (overall carbon emissions reduction targets) is amended as follows.
- (2) In subsection (1)—
- (a) in the words before paragraph (a) for “by the Authority of its functions” substitute “ of the functions of the Administrator ”;
  - (b) in paragraph (b) omit “generators,”.
- (3) In subsection (2)—
- (a) in the words before paragraph (a) for “the Authority to apportion the target” substitute “ the target to be apportioned ”
  - (b) in paragraph (b) omit “electricity generators,”.
- (4) In subsection (3) for “The Authority” substitute “ The Administrator ”.
- (5) In subsection (4) omit “electricity generators,”.

**Commencement Information**

**I54** Sch. 1 para. 8 (1)(2)(a)(3)(a)(4) in force at 18.12.2011, see s. 121(5)(a)

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**Changes to legislation:** There are currently no known outstanding effects for the Energy Act 2011. (See end of Document for details)

**I55** Sch. 1 para. 8(2)(b)(3)(b)(5) in force at 1.1.2013, see s. 121(5)(b)

9 In section 105 (general restriction on disclosure of information) in subsection (3) (circumstances in which the restriction does not apply to a disclosure) after paragraph (a) insert—

“(ab) it is required by a notice under section 103B of this Act or is permitted by subsection (6) of that section;”.

## SCHEDULE 2

Section 89

### UPSTREAM PETROLEUM INFRASTRUCTURE: MINOR AND CONSEQUENTIAL AMENDMENTS

#### *Pipe-lines Act 1962*

1 The Pipe-lines Act 1962 is amended in accordance with paragraphs 2 to 7.

#### **Commencement Information**

**I56** Sch. 2 para. 1 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

2 In section 9 (provisions for securing that a pipeline is so constructed as to reduce necessity for construction of others)—

(a) in subsection (8) for the words from “applications” to the end substitute “with respect to the proposed pipe-line—

(a) an application of a kind mentioned in subsection (1)(a) of section 82 of the Energy Act 2011 (acquisition of rights to use upstream petroleum infrastructure), and

(b) if applicable, an application under subsection (4) of that section.”;

(b) after subsection (8) insert—

“(9) For the purposes of an application made with respect to a proposed pipe-line by virtue of subsection (8)—

(a) sections 82 and 83 of the Energy Act 2011 shall have effect as if—

(i) references to a pipe-line were references to the proposed pipe-line as it would be once constructed in accordance with the condition attached by virtue of subsection (1) of this section;

(ii) references to the owner of a pipe-line were reference to the proposed owner of the proposed pipeline;

(b) section 84 of the Energy Act 2011 shall be disregarded.”

#### **Commencement Information**

**I57** Sch. 2 para. 2 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

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- 3 In section 9A (provisions for securing that an additional pipe-line is so constructed as to reduce necessity for construction of other pipe-lines)—
- (a) in subsection (8) for the words from “applications” to the end substitute “with respect to the proposed pipe-line—
    - (a) an application of a kind mentioned in subsection (1)(a) of section 82 of the Energy Act 2011 (acquisition of rights to use upstream petroleum infrastructure), and
    - (b) if applicable, an application under subsection (4) of that section.”;
  - (b) after subsection (8) insert—
    - “(9) For the purposes of an application made with respect to a proposed pipe-line by virtue of subsection (8)—
      - (a) sections 82 and 83 of the Energy Act 2011 shall have effect as if—
        - (i) references to a pipe-line were references to the proposed pipe-line as it would be once constructed in accordance with the notice served under subsection (1) of this section;
        - (ii) references to the owner of a pipe-line were reference to the proposed owner of the proposed pipeline;
      - (b) section 84 of the Energy Act 2011 shall be disregarded.”

**Commencement Information**

**I58** Sch. 2 para. 3 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 4 In section 10A(2) for “, 10(4) or 10E(9)” substitute “ or 10(4) ”.

**Commencement Information**

**I59** Sch. 2 para. 4 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 5 Sections 10E to 10H (provisions for securing that upstream petroleum pipe-lines are so used as to reduce necessity for construction of other etc) are repealed.

**Commencement Information**

**I60** Sch. 2 para. 5 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 6 In section 65(2) (meaning of “pipeline”) omit paragraph (g) and the “and” immediately before that paragraph.

**Commencement Information**

**I61** Sch. 2 para. 6 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 7 In section 66(1) (general interpretation provisions)—

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- (a) in paragraph (c) of the definition of “owner” for the words from “sections 10C” to “section 10E(2)” substitute “ section 10C ”;
- (b) for the definition of “upstream petroleum pipe-line” substitute—
  - ““upstream petroleum pipe-line” has the meaning given by section 90(1) of the Energy Act 2011”.

**Commencement Information**

**I62** Sch. 2 para. 7 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

*Petroleum Act 1998*

- 8 The Petroleum Act 1998 is amended in accordance with paragraphs 9 to 15.

**Commencement Information**

**I63** Sch. 2 para. 8 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 9 In section 15 (authorisations for construction and use of controlled pipelines) in subsection (6) after “or 17G(6)” insert “ of this Act or section 89(4) and (5) of the Energy Act 2011 ”.

**Commencement Information**

**I64** Sch. 2 para. 9 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 10 In section 16 (compulsory modifications of controlled pipelines) before subsection (1) insert—
- “(A3) Pipelines that are relevant upstream petroleum pipelines for the purposes of section 82(1) of the Energy Act 2011 are excepted from the operation of this section.”

**Commencement Information**

**I65** Sch. 2 para. 10 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 11 In section 17 (acquisition of rights to use controlled pipelines) for subsection (1A) substitute—
- “(1A) This section does not apply to—
- (a) controlled petroleum pipelines;
  - (b) pipelines in, under or over the territorial sea adjacent to Great Britain which are used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises;
  - (c) gas interconnectors (within the meaning of Part 1 of the Gas Act 1986).”

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**Commencement Information**

**I66** Sch. 2 para. 11 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 12 In section 17F (acquisition of rights to use controlled petroleum pipelines) in subsection (1) for the words from “, other” to the end substitute “ in, under or over the territorial sea adjacent to Northern Ireland ”.

**Commencement Information**

**I67** Sch. 2 para. 12 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 13 In section 17G (section 17F: supplemental) in subsection (1) for “controlled waters” substitute “ the territorial sea adjacent to Northern Ireland ”.

**Commencement Information**

**I68** Sch. 2 para. 13 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 14 In section 18 (termination of authorisations for construction and use of controlled pipelines) in subsection (6)(b) after “or 17F(9)” insert “ of this Act or section 82(11) of the Energy Act 2011 ”.

**Commencement Information**

**I69** Sch. 2 para. 14 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 15 In section 19 (vesting of controlled pipelines on termination or subsequent issue of authorisations) in subsection (1)(b) after “or section 17F(9)” insert “ of this Act or section 82(11) of the Energy Act 2011 ”.

**Commencement Information**

**I70** Sch. 2 para. 15 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

*Energy Act 2008*

- 16 The Energy Act 2008 is amended in accordance with paragraphs 17 and 18.

**Commencement Information**

**I71** Sch. 2 para. 16 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 17 Sections 80 to 82 (third party access to oil processing facilities) are repealed.

**Commencement Information**

**I72** Sch. 2 para. 17 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

- 18 In section 112 (extent) omit paragraph (c) of subsection (2).



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**Commencement Information**

**I73** Sch. 2 para. 18 in force at 21.3.2012 by S.I. 2012/873, art. 2(b)(i) (with art. 4)

**Status:**

Point in time view as at 01/01/2013. This version of this Act contains provisions that are not valid for this point in time.

**Changes to legislation:**

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