

ENERGY BILL

EXPLANATORY NOTES ON LORDS AMENDMENTS

INTRODUCTION

1. These explanatory notes relate to the Lords Amendments to the Energy Bill, as brought from the House of Lords on 19th November 2013. They have been prepared by the Department of Energy and Climate Change in order to assist the reader of the Bill and the Lords Amendments and to help inform debate on the Lords Amendments. They do not form part of the Bill and have not been endorsed by Parliament.
2. These notes, like the Lords Amendments themselves, refer to HL Bill 30, the Bill as first printed for the Lords.
3. These notes need to be read in conjunction with the Lords Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the effect of the Lords Amendments.
4. All the Lords Amendments were in the name of the Minister except for Lords Amendment 105, which was opposed by the Government. (In the following Commentary, an asterisk appears in the heading of the paragraphs dealing with these non-Government amendments).

COMMENTARY ON LORDS AMENDMENTS

Part 1: Decarbonisation

Lords Amendments 1, 2, 4, 7 and 9-14

5. These amendments would replace all references to “Great Britain” in Part 1 of the Bill with “the United Kingdom”. The effect of this would be to extend the scope of all the decarbonisation provisions so that they extend to and apply within the UK, enabling the Secretary of State to set a decarbonisation target range for the UK (as opposed only to Great Britain).

Lords Amendments 3, 6, 8 and 15

6. These Lords Amendments would add the Northern Ireland Department of Enterprise, Trade and Investment, alongside Scottish and Welsh Ministers, to the list of those who must be consulted prior to laying a draft decarbonisation order before Parliament or before laying a report before Parliament under clause 3(1) setting out proposals and policies for meeting any decarbonisation target range.

7. The amendments would also require the Secretary of State to provide a copy of the annual statement setting out the emissions intensity of the UK electricity generation sector to the Department of Enterprise, Trade and Investment as well as to Scottish and Welsh Ministers.

Lords Amendment 5

8. Lords Amendment 5 would ensure that differences in circumstances between England, Wales, Scotland and Northern Ireland are to be taken into account when setting or amending a decarbonisation target range.

Part 2: Electricity Market Reform

Lords Amendments 16, 19, 22, 23, 31, 33, 35, 36, 38

9. These Amendments would be consequential on the new clauses inserted by Lords Amendments 25 (Secretary of State issuing standard terms), 26 (CFD notifications), 27 (allocation of CFDs), 28 (CFD notification: offer to contract on standard terms) and 29 (modification of standard terms).

Lords Amendment 17

10. This amendment would move most regulations made under Part 2 Chapter 2, on Contracts for Difference, to the affirmative procedure. It would implement a recommendation of the Delegated Powers and Regulatory Reform Committee, which called for a number of powers across the Bill to be subject to increased Parliamentary scrutiny.

Lords Amendments 18, 47 and 103

11. These Lords Amendments to Clauses 6 and 34 and Schedule 2 would make provision so that the regulations relating to Contracts for Difference (CfD), Capacity Market and Investment Contracts are not be treated as hybrid. The regulations are expected to specify a private company and confer functions on it which could be regarded as adversely affecting its private interests (i.e. they would be unable to stop performing functions without amendment to the regulations), raising the possibility that they could be considered hybrid. It is not necessary for the regulations to be treated as hybrid because the existing duty to consult before making regulations

should provide adequate protection that private interests will be fully considered.

12. The regulations relating to these powers are expected to specify Elexon Ltd (the Balancing and Settlement Code Company) as carrying out specific functions. Because Elexon is a private company, with private interests, this raises the possibility that the regulations could be considered hybrid and therefore subject to the special procedure for hybrid instruments in the House of Lords.

13. The existing statutory duties to consult before making regulations (see clauses 18 and 35 and paragraph 13 of Schedule 2), and on-going engagement between DECC and Elexon already provides opportunity to consider any impact on Elexon's private interests.

Lords Amendments 20, 21 and 104

14. Lords Amendments 20 and 21 and 104 are minor drafting amendments which would clarify clause 9(9) and paragraph 7(10) of Schedule 2. They would not provide the counterparty with new powers to recover monies owed to it. These amendments would make this clear. They would not change the substantive legal effect.

Lords Amendment 24

15. Lords Amendment 24 would remove the power which the Secretary of State had in what was Subsection (6) of clause 10 to make provision about appeals against a decision not to issue a direction. This Amendment would mean that a generator who seeks a bespoke CfD through direct negotiations with the Secretary of State can challenge a decision not to issue a direction by bringing a judicial review action.

Lords Amendment 25

16. This Amendment would insert a new clause after clause 10 giving the Secretary of State power to issue and (from time to time) revise standard terms for CfDs (Subsections (1) and (2), respectively). The Bill as it left the Commons did not specify how the terms of a CfD contract would be determined, other than to state (in clause 10(1)) that a CfD should be offered following a direction from the System Operator or the Secretary of State, "on terms specified in the direction". This gave the System Operator broad discretion to set the terms of the CfD contract. This amendment would remove that discretion in favour of standard terms determined by the Secretary of State.

17. Subsection (3) of the new clause would place the Secretary of State under a duty to issue or revise standard terms in accordance with provision made in regulations. Subsection (4) would require the Secretary of State to have regard to the matters listed in clause 5(2) when issuing or revising standard terms. Subsection (5) would place the Secretary of State under a duty to publish standard terms as issued or revised under this Section. Subsection (7) would allow for different standard terms to be issued for

different categories of CfD (for example, for generators in Northern Ireland).

18. Subsection (6) would enable the Secretary of State to designate particular standard terms as terms which may not be modified under the power in the new clause inserted by amendment 29 (modification of standard terms). This would allow for greater control over the modification process, ensuring greater clarity for the CfD counterparty and for generators, regarding which modifications are permitted.

19. The new power to issue standard terms would work in concert with Lords Amendments 26 (specifying how the System Operator is to notify the CfD counterparty of an allocation decision) and 28 (specifying how the CfD counterparty is to act upon such a notification and offer the generator a contract, using the standard terms).

Lords Amendment 26

20. This Amendment would insert a new clause after clause 10 to set out how the System Operator is to notify the CfD counterparty of an allocation decision. Subsection (1) would state that such a notification must specify the eligible generator and “such other information as may be required” by the CFD counterparty for the purpose of making an offer under the new clause inserted by amendment 28 (CFD notification: offer to contract on standard terms), see below. Subsection (2) would require that a notification must not be given if regulations made under clause 17 (regarding maximum costs and targets) prevent it. Subsection (3) would allow for regulations to make further provision about the circumstances in which a notification may or must be given, the kinds of information that must be specified in a notification, and appeals against decisions not to give a notification.

21. Subsections (4), (5) and (6) would make provision for the involvement of the Department of Enterprise, Trade and Investment in the application of this new clause in Northern Ireland.

Lords Amendments 27 and 41

22. This Amendment would insert a new clause after clause 10 allowing the Secretary of State to make provision setting out detailed rules about the CfD allocation process. The rules would be applicable to those wishing to apply for a CfD and to National Grid who, as the System Operator, will be acting as the Delivery Body, and running the CfD allocation process.

23. This Amendment would make clear the process to be used to set the rules and also would provide clarity about the type of matter which will be detailed in the rules. Subsection (1) would set out that regulations can provide for detail on how allocations of CfDs are to take place. Subsection (2) would confer a power for setting the rules of allocation in an “allocation framework” – a document which would sit outside of regulations but be constrained by provision made in regulations. An “allocation

framework” would be produced and published for allocation rounds, and include information about when those allocation rounds will be held. This would allow for a clear “rule book” to be provided setting out how allocation rounds will operate. Subsection (2)(e) would enable the Secretary of State to make provision in regulations about what must be included in an “allocation framework”.

24. For example, the Secretary of State may decide that it is important to investors to ensure that an “allocation framework” includes information about the budget available for a particular allocation round and may therefore require an “allocation framework” to contain this information when it is produced.

25. Subsection (3) would allow the regulations to set out requirements as regards notice periods to be adhered to before the start of allocation rounds, and restrict the Secretary of State’s ability to amend the allocation framework for those participants in an open allocation round. This would provide certainty to industry that the process will not change without due warning.

26. Subsections (4) to (6) would set out further detail of those areas that an allocation framework may provide. These include conferring functions on the System Operator to allow them to carry out the allocation process, the setting of targets for types or location of generation, the mechanics of competitive allocation, and allowing for calculations and determinations to be made to support the allocation of CfDs. These are all functions which may need to change at short notice, allowing the Government to respond in a timely manner to external factors, to protect budgets and to protect consumers by preventing gaming. Examples of such changes that might be necessary are responding to a sudden change in the costs of a particular technology, or allowing change to the mechanism for competitive allocation in response to lessons learned during operation.

27. Subsection (7) would allow any allocation framework made to be amended, and Subsection (8) would provide that Subsections (4) to (7) are subject to regulations, which could restrict what can be contained in the allocation framework.

28. Lords Amendment 41 would be consequential on Lords Amendment 27 (CfD allocation) and remove provision which is now included in the new clause introduced by Lords Amendment 27 (see Subsection (4)(b) in Lords Amendment 27).

Lords Amendment 28

29. This Amendment would insert a new clause after clause 10 to detail how the CfD counterparty is to act upon a notification from the System Operator. Subsection (1) would place a duty on the CfD counterparty to offer a contract to the eligible generator specified in the notification, and would require that this offer must be on the standard terms, or on the standard terms as modified in accordance with the procedure provided for in the new clause inserted by amendment 29 (modification of standard

terms).

30. Subsection (2) would state that regulations may make further provision regarding matters such as how the CfD counterparty is to apply or complete the standard terms in response to a notification and how the eligible generator to whom the offer is made may enter into a CfD as a result.

Lords Amendment 29

31. This Amendment would insert a new clause after clause 10 to enable the CfD counterparty to agree modifications to the standard terms with generators, on a case by case basis, pre-signature. This flexibility to make such modifications would allow all eligible generators to participate in the CfD regime. This will be because, especially in the early stages of the CfD regime, there will be some generators for whom the standard terms will not apply perfectly for reasons such as their specific types of company, financing or debt structure, without such small modifications.

32. This flexibility would be constrained in order to reduce the risk of generators using it to negotiate improvements to the standard terms for competitive reasons. Subsection (3) would specify that a modification can only be agreed if it is both ‘minor’ and ‘necessary’, as determined by the CfD counterparty, following provision made in regulations. Subsection (4) would provide for further provision to be made in regulations, including regarding the circumstances in which a generator may request a modification, the procedure to be followed in requesting a modification, and how the CfD counterparty is to make a determination on such a request.

Lords Amendment 30

33. This Amendment would insert a new clause after clause 10 to enable regulations to make further provision relating to the new clauses inserted by Lords Amendments 26 (CfD notifications), 27 (CfD allocation), 28 (offer to contract) and 29 (modification of standard terms). This amendment would enable provision to be made in regulations enabling calculations and determinations to be made by such persons and in accordance with such procedure as is specified.

34. For example, in relation to Lords Amendment 26 (CfD notifications), this new clause would enable the CfD counterparty to make determinations about what information should be included in the notification provided by the System Operator. In relation to Lords Amendment 28 (offer to contract), this new clause would enable the CfD counterparty to determine precisely how the information in the notification should be applied to the contract, and whether a generator’s response to an offer is acceptable. Finally this new clause would also be used in relation to Lords Amendment 29 (modification of standard terms) to enable the CfD counterparty to determine whether a generator has provided sufficient information and evidence that a modification is both minor and necessary.

Lords Amendments 32, 34, 37, 39, 40, 42

35. Lords Amendment 32 would change the process by which maximum cost level and other targets may be set. In clause 17 the Secretary of State was given the power to provide for such maximum cost levels or targets by order. This Amendment would change the clause to state that “Regulations may make provision for” such levels or targets. Lords Amendments 34, 37, 39, 40 and 42 are consequential on Lords Amendment 32.

Lords Amendments 43 and 44

36. Lords Amendment 43 would extend the Secretary of State’s duty to consult (in clause 18) to also include consultation on standard terms before they are issued. Lords Amendment 44 is consequential to Lords Amendment 43.

Lords Amendment 45

37. Lords Amendment 45 to clause 28, inserting new Subsection (5), would require the Authority to obtain the Secretary of State’s consent where it makes Capacity Market rules conferring functions on itself. It would implement a recommendation of the Delegated Powers and Regulatory Reform Committee to ensure a sufficient level of oversight when the Authority makes Capacity Market rules.

Lords Amendment 46

38. This amendment to clause 34, inserting new Subsections (5), (6) and (7), would move any regulations made under Part 2 Chapter 3, on the Capacity Market, to the affirmative procedure, except for regulations only containing provision under clause 27 (other than the first regulations under clause 27) and regulations under clause 32 which only amend secondary legislation, both of which remain subject to the negative resolution procedure. It would implement a recommendation from the Delegated Powers and Regulatory Reform Committee, which called for a number of powers across the Bill to be subject to increased Parliamentary scrutiny.

Lords Amendment 48

39. Lords Amendment 48 is a minor amendment, which would allow past consultation exercises to count towards the statutory duty on the Secretary of State to consult with certain parties listed in clause 35(7) when making Capacity Market Rules. Similar provision already exists for other powers in the Bill, for example clause 18(2).

Lords Amendment 49

40. Lords Amendment 49 amends clause 37, which enables the Secretary of State to spend money on an electricity demand reduction pilot programme, to add a statutory reporting requirement for any EDR pilot schemes. It sets out a duty to review the

operation and effectiveness of a pilot scheme and then to report the results of that review to Parliament. This can be done through a written report laid in both Houses, or, if the Secretary of State thinks it should be done orally, by making a statement.

Lords Amendments 98, 99, 100 and 101

41. These Lords Amendments would make minor drafting changes to paragraph 1(3) in Schedule 2 relating to Investment Contracts. Lords Amendments 98, 99 and 100 would clarify that an Investment Contract will continue to be an Investment Contract even where a party ceases to meet the Bill definition (see paragraph 1(3)) of an “electricity generator”). Lords Amendment 101 would make clear that an Investment Contract can have more than two parties provided that at least one is a generator which is under an obligation to make payments under the contract.

Lords Amendment 102

42. Lords Amendment 102 would move any regulations made under Parts 1, 2 and 3 of Schedule 2, on Investment Contracts, to the affirmative procedure. This is with the exception of regulations under Paragraph 10 (information) and Paragraph 11 (conferring functions on the Authority), which would be subject to the affirmative procedure the first time they are made only. This amendment would implement a recommendation of the Delegated Powers and Regulatory Reform Committee, which called for a number of powers across the Bill to be subject to increased Parliamentary scrutiny.

Lords Amendment 50

43. Lords Amendment 50 would clarify the purposes for which the Secretary of State may, under clause 44, modify supply licences issued under Section 6(1)(d) of the Electricity Act 1989 and industry codes and agreements which have been established under those licences. Specifically, the power would only be able to be used for the purpose of facilitating investment in electricity generation by means of a power purchase agreement (PPA) scheme, defined under Subsection (3)(a) as a scheme for promoting the availability to electricity generators of PPAs.

44. This amendment would provide that a PPA under the PPA scheme is an arrangement under which a supplier agrees to purchase electricity from a generator at a discount to a prevailing market price.

45. Subsection (4) would set out the nature of the provisions that may be made in licence or code modifications under this clause, including provision about the eligibility of electricity generators to enter into PPAs under the scheme, the terms of those PPAs, and the circumstances in which a licensed supplier would be required or permitted to enter, or offer to enter, into a PPA. This amendment would enable the Secretary of State via licence or code modifications to determine a market price and

amount of a discount in PPAs under the scheme.

46. Subsections (5) and (6) would set out further details about the process for determining which licensed supplier or suppliers must or may enter into a PPA with a generator under the scheme in any particular case.

Lords Amendment 51

47. Lords Amendment 51 would insert a new clause after clause 44 which would give the Secretary of State the power to make regulations in connection with any modifications made under clause 44. Regulations could include provisions for apportioning the costs or benefits of the scheme amongst suppliers, including requiring suppliers to pay a levy to the Authority or receive a payment from it; and they could confer functions on the Secretary of State or the Authority, including delegation of functions. Before making regulations, the Secretary of State would be required to consult relevant persons, including licensed suppliers and the Authority. Regulations and licence modifications would be subject to the negative parliamentary procedure

Lords Amendment 52

48. Lords Amendment 52 would insert a new clause after clause 44 extending Section 105 of the Utilities Act 2000 to include clauses 44 and 45 of the Energy Bill in relation to general restrictions on disclosure of information. This would protect confidential information disclosed by parties as part of the running of the power purchase agreement scheme.

Lords Amendment 53

49. Lords Amendment 53 would require the Secretary of State and the Authority to apply the principal objective and comply with the general duties set out in Sections 3A to 3D of the Electricity Act 1989, when exercising functions relating to a power purchase agreement scheme. This would include the need to have regard to the interests of consumers and the need to reduce greenhouse gas emissions, promote competition and ensure security of supply.

Lords Amendments 54 and 58

Lords Amendment 54 would insert a new clause before clause 46 and confer a power on the Secretary of State to make a renewables obligation closure order. The closure order would prevent renewables obligation certificates from being issued under any renewables obligation order (whether made by the Secretary of State or by the Scottish Ministers) in respect of electricity generated after a specified date. Different closure dates may be specified for different cases or circumstances. The powers in Sections 32 to 32M of the Electricity Act 1989 (renewables obligation) would be subject to the provisions contained in the closure order.. The amendment would also

provide the Department for Enterprise, Trade and Investment in Northern Ireland with the power to make a similar amendment to their powers in relation to the Northern Ireland renewables obligation.

50. Lords Amendment 58 is a consequential amendment following the insertion of Section 32LA into the Electricity Act 1989 by Lords Amendment 54 and the amendment made to Section 106 of the Electricity Act by Subsection (3) of Lords Amendment 54.

Lords Amendment 55

51. Lords Amendment 55 would remove the power to authorise the Secretary of State to hold regular reviews of the banding provisions under the certificate purchase scheme.

Lords Amendment 56

52. Lords Amendment 56 to clause 46 would place a duty on the Secretary of State to exercise a number of powers listed for a certificate purchase order in the way that the Secretary of State considers would replicate the effect of a provision made by virtue of an equivalent power for the renewables obligation in England & Wales or in Scotland. For the purpose of this duty, it does not matter whether the provision of a renewables obligation order which is being replicated was made by the Secretary of State or by the Scottish Ministers and it does not matter whether the provision being replicated is still in force.

53. When the listed powers are exercised in relation to Northern Ireland, they should be exercised in the way that the Secretary of State considers would replicate the effect of a provision made by virtue of an equivalent power for the Northern Ireland renewables obligation. The duty would apply only to the extent that it appears reasonably practicable to exercise the listed power in that way and only to the extent that it is not inconsistent with other duties on the Secretary of State.

Lords Amendment 57

54. Lords Amendment 57 would ensure that the duties on the Secretary of State in relation to the Strategy and Policy Statement (provided for by Part 5 of the Bill) would not apply to the Secretary of State when exercising the powers for the certificate purchase order in relation to Northern Ireland.

Lords Amendments 59, 60, 61, 62, 106, 107 and 108

55. Lords Amendment 60 would insert a new clause which provides that a new fossil-fuel plant that is equipped with carbon capture and storage (CCS) will be exempt from the emissions limit duty for a period of 3 years starting from the date when a complete CCS system (capture, transport and storage) is ready for use. The

exemption would be time-limited and available until the end of 2027.

56. Lords Amendment 102 would add to the existing powers available under Schedule 4 to enable the exemption to be applied with modifications so that it could be applied to only those parts of a fossil fuel plant that are fitted with a complete CCS system.

57. The remaining amendments are consequential. Lords Amendment 59 amends clause 50(5) to make clear the emissions limit duty introduced by clause 50(1) is subject to the CCS exemption. Lords Amendment 101 amends paragraph 3 of Schedule 4 which contains the power to make regulations under clause 50(6)(b) to modify the emissions limit duty where a gasification plant or a CCS plant is associated with two or more electricity generating stations.

58. Lords Amendment 108 would amend the power under paragraph 4 of Schedule 4 so that the emissions limit duty could be adjusted to take account of particular circumstances. For example, if the CCS exemption starts to apply to a fossil fuel plant part way through a calendar year then any existing emissions limit would need to be adjusted to take account of the exemption's application.

59. Lords Amendment 61 would amend the definition of "CCS plant" for the purpose of the CCS exemption.

60. Lords Amendment 62 would amend the definition of "year" to make clear that the CCS exemption will run for a period of three years, not three calendar years which is what the effect would be without this consequential amendment.

Lords Amendment 63

61. Lords amendment 63 extends the power to make licence modifications in clause 53(9)(c) by including in it a reference to subsection 7(6A) of the Electricity Act 1989. Subsection 7(6A) is a power which enables provision to be included in a licence. It provides, "[c]onditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.". By incorporating a reference to section 7(6A) of the Electricity Act 1989 the power in clause 53(9)(c) is widened so that, when implementing the EMR regime, provision can be made which refers to a document as it is revised or re-issued from time to time. The practical benefit of this power is that it will prevent the need for a licence to be amended on every occasion a document to which it refers is updated or revised.

Part 3: Nuclear Regulation

Lords Amendments 64 and 65

62. Lords Amendments 64 and 65 would introduce a definition of the term

“associated site” in clause 57 (nuclear safety purposes). This would make it clear that, in relation to a nuclear installation, the site on which it is installed is its “associated site”. The definition ensures all aspects of site design, such as roads and buildings which are not nuclear installations, are within the ONR’s nuclear safety purposes.

Lords Amendments 66, 67, 68 and 69

63. Lords Amendments 66 to 69 would amend clause 68 and include a new clause immediately after it. These would provide for a parliamentary process, akin to the negative procedure, to apply to the approval and amendment of Codes of Practice issued by the ONR. The ONR would submit a draft Code of Practice, or a draft amendment to an existing Code of Practice, to the Secretary of State who may approve the draft code or amendment, with or without modification. Any modifications would require the consent of the ONR before they could be approved. Once approved, the Secretary of State would be required to lay the draft code or amendment before Parliament for 40 days. If no resolution was made to oppose the code during that period, the ONR would be able to issue the code or (where what was submitted was an amendment to an existing code) revise the existing code. To withdraw a code, the ONR would have to seek approval from the Secretary of State.

Lords Amendment 109

64. Lords Amendment 109 would enable information disclosed by HMRC under clause 86 to a health and safety inspector warranted by ONR under the Health and Safety at Work etc. Act 1974, to be treated as protected information under Schedule 9 (disclosure of information). This would ensure the information was treated in the same manner as information disclosed by HMRC under clause 86 to an inspector appointed by the ONR under the Energy Bill.

Lords Amendment 110

65. Lords Amendment 110 would bring the definition of “relevant provision” in Schedule 10 into alignment with the definition of “relevant statutory provisions” in clause 70.

Lords Amendments 70, 71 and 72

66. Lords Amendments 70, 71 and 72 would amend clause 101 to require nuclear regulations (regulations made under clause 63) to follow the affirmative resolution procedure in certain additional circumstances. These are where they are the first nuclear regulations to be made by the Secretary of State; where they amend the Nuclear Installations Act 1965 (the amendments do not affect the position in relation to nuclear regulations which amend the Nuclear Safeguards Act 2000, which must still be by affirmative resolution); or where they create a new offence. Where an existing offence is revoked or re-enacted by nuclear regulations, it would not constitute the

creation of a new offence for the purposes of this Section.

Lords Amendments 73, 74 and 75

67. Lords Amendments 73, 74 and 75 would amend clause 102 to allow the Secretary of State to make transitional provision requiring that certain regulations that apply currently to ONR as an agency of the Health and Safety Executive, would be treated as if they applied to ONR when it became a statutory body. The regulations referred to are those described in Subsections (3) and (4). The amendments would ensure that the power to make transitional provision covers the existing regulations under which the ONR charges fees and the provisions governing the conduct of inquiries.

Lords Amendment 111

68. Lords Amendment 111 would clarify that compensation could only be paid by the Secretary of State in respect of property transfer schemes made under Schedule 11 and not in connection with staff transfers.

Lords Amendment 112

69. Lords Amendment 112 would allow regulations to be made jointly under both the Energy Bill and the Health and Safety at Work etc. Act 1974 in cases where the Energy Bill required regulations to be made following an affirmative procedure. It would specify that where regulations were made jointly, they would follow the Energy Bill's provisions on subordinate legislation.

Part 6: Consumer Protection and Miscellaneous

Lords Amendments 76, 77, 79 and 83

70. The purpose of Lords Amendments 76, 77, 79 and 83 is to enable domestic consumers to be given information about costs energy suppliers incur in providing the supply of gas and electricity and costs that make up an energy bill. It gives the Secretary of State the power to require energy suppliers to provide a breakdown of such costs to domestic consumers. It allows the Secretary of State to set out the categories of costs that must be included in the breakdown and to determine the frequency with which this information is provided.

Lords Amendments 78, 80, 81 and 82

71. Lords Amendment 78 has the effect of specifying that, as regards the power to require licence holders to provide information about domestic tariffs and supply contract terms under Clause 127, provision may be made to require that information be provided in a form which is clear and easily understand. Lords Amendments 80, 81 and 82 are minor consequential amendments to clause 127 to ensure

consistency in the terms used throughout the clause.

Lords Amendment 84, 85 and 86

72. Lords Amendments 84, 85 and 86 would make the order making power, by which the “principal terms” of a domestic supply contract would be defined for the purposes of the tariff reform powers in clause 127, subject to the negative resolution procedure.

Lords Amendments 87 and 95

73. These amendments, which insert a new clause after clause 132, would amend the Warm Homes and Energy Conservation Act 2000 and would result in a new objective for fuel poverty in England that would be set through secondary legislation. They would remove the current target to eradicate fuel poverty so far as reasonably practical by 2016 and replace this with a duty to set a new objective for addressing the situation of persons in England who live in fuel poverty. These amendments also include a requirement to put in place a new fuel poverty strategy for achieving the new objective. The changes to the Warm Homes and Energy Conservation Act 2000 relate only to England and the provisions as they relate to Wales remain unchanged.

Lords Amendments 88 and 96

74. The purpose of Lords Amendment 88, which inserts a new clause before clause 133, is to confer a power on the Secretary of State to increase the specified maximum capacity of installations eligible for the Feed-in Tariffs (FITs) scheme from 5 megawatts to 10 megawatts.

75. The powers under which the FITs scheme is established are set out in Sections 41 to 43 of the Energy Act 2008. The powers can be used in relation to small-scale low-carbon generation of electricity. Such generation is defined as the use of plant with a capacity which does not exceed the maximum capacity specified by the Secretary of State by order. As currently defined, in Section 41(4) of the Energy Act 2008, that capacity must not exceed 5 megawatts. The clause, inserted by Lords Amendment 88 increases this to 10 megawatts. The Secretary of State would therefore be able to specify a maximum capacity up to that figure.

76. Lords Amendment 96 would be a technical amendment which provides that the clause inserted by Lords Amendment 88 will be commenced two months after Royal Assent.

Lords Amendments 89 and 113

77. These amendments would insert a new clause after clause 135 and amend the Title. Lords Amendment 89 gives the Secretary of State order making powers to require the installation of smoke alarms and carbon monoxide alarms in domestic

These notes relate to the Lords Amendments to the Energy Bill, as brought from the House of Lords on 20th November 2013 Bill 133

rented buildings with suitable financial penalties for non-compliance. Any regulations made under this power would be subject to affirmative resolution by both Houses.

Lords Amendment 90

78. Lords Amendment 90 would add Part 1 of the Bill (on decarbonisation) to the list in clause 140 of those provisions of the Bill which extend to Northern Ireland.

Lords Amendments 91 and 94

79. Lords Amendments 91 and 94 are consequential amendments to clause 140 and 141 respectively following the insertion of amendment 54 into chapter 7 of Part 2 of the Bill.

Lords Amendment 92

80. Lords Amendment 92 to clause 140 relates to the provision in amendment 54 which enables the Department of Enterprise, Trade and Investment to take a similar power to make a renewables obligation closure order for Northern Ireland. It would ensure that provision extends to Northern Ireland only.

Lords Amendment 93

81. Lords Amendment 93 to clause 140 relates to the provisions in Lords Amendments 87 and 89. It would ensure that these amendments extend to England and Wales only.

Lords Amendment 97

82. Lords Amendment 97 to clause 141 would provide for the power to make a renewables obligation closure order to come into force on the day on which the Bill is passed.

****Lords Amendment 105***

83. Lords Amendment 105 would insert a power at paragraph 1 of Schedule 4 that would allow the Secretary of State to make regulations applying the emissions limit duty (with or without modifications) to an electricity generation station consented before clause 50(1) comes into force (and therefore not otherwise subject to the emissions limit duty), where the electricity generating station fits substantial pollution abatement equipment dealing with oxides of sulphur, oxides of nitrogen, heavy metal emissions or particles. The fitting of such equipment is necessary for coal-fired power stations to meet the emissions limits for oxides of sulphur and nitrogen under the Industrial Emissions Directive which come into force on 1 January 2016. As a result, this amendment would confer power to make regulations which would have the effect

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of bringing existing coal-fired power stations within the ambit of the duty in future.

FINANCIAL EFFECTS OF THE LORDS AMENDMENTS

84. Lords Amendment 51 (which would insert a new clause after clause 44) would enable the Secretary of State to make regulations apportioning the costs or benefits of a PPA scheme amongst electricity suppliers, including requiring them to pay a levy to the Authority or receive a payment from it. A PPA scheme is intended to be a ‘backstop’ measure, so it would be expected that generators would rarely require PPAs under the scheme. Where generators have entered into such PPAs, any levy on suppliers would be likely to be treated as imputed tax and spend, and would have implications on public finances. Suppliers are likely to pass on the cost of any levy to consumers through their energy bills.

85. Lords Amendment 88 is likely to be treated as imputed tax and spend and will have implications on the public finances. The cost of funding this measure is intended to be funded wholly by obligations placed on electricity suppliers. Suppliers are likely to pass on the cost of these to consumers through their electricity bills.

LORDS AMENDMENTS TO THE ENERGY BILL

EXPLANATORY NOTES

These notes refer to the Energy Bill as first printed for the Lords [HL Bill 30]

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