

Energy Markets Bill

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TO

Promote sustainable energy and energy efficiency; to make further provision about the regulation of the gas and electricity supply industries and about electricity transmission; and for connected purposes.

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:—

Purpose of this Act

1 Purpose of the Act

- (1) The purpose of this Act is to increase the extent to which—
- (a) regulation of the relevant energy markets, and
 - (b) activities of the Secretary of State relating to— 5
 - (i) those markets, and
 - (ii) the Government’s sustainable energy aims,
- have regard to the provision of warmth, as opposed to the consumption of energy, in order to support the objectives set out in subsection (2).
- (2) The objectives set out in this subsection are— 10
- (a) to eliminate fuel poverty in Great Britain,
 - (b) to cut emissions of greenhouse gases in Great Britain, and
 - (c) to enhance the availability of sustainable energy and heat for consumers in Great Britain.
- (3) In this section— 15
- “consumers” includes both existing and future consumers;
 - “fuel poverty” has the same meaning as in section 1 of the 2003 Act (annual reports on progress towards sustainable energy aims);
 - “the Government’s sustainable energy aims” means the aims set out in subsection (1)(a) to (d) of that section of the 2003 Act; 20
 - “greenhouse gases” has the same meaning as in section 82 of the 2004 Act (microgeneration).

Duties of the Secretary of State and the Authority

2 Strategic targets

- (1) It shall be the duty of the Secretary of State, in order to further the purpose of this Act, to establish, and from time to time revise, strategic targets relating to domestic energy efficiency. 5
- (2) In establishing or revising strategic targets under subsection (1), the Secretary of State shall have regard to—
- (a) any energy efficiency aim established by the Secretary of State under section 2 of the 2003 Act (energy efficiency of residential accommodation: England), 10
 - (b) any energy efficiency aim established by the National Assembly for Wales under section 3 of the 2003 Act (energy efficiency of residential accommodation: Wales),
 - (c) the duty of the Secretary of State under section 217(1) of the Housing Act 2004 (energy efficiency of residential accommodation: England), 15
 - (d) any aim, target or commitment of the Scottish Ministers or that is imposed by an enactment of the Scottish Parliament that is, in the opinion of the Secretary of State, comparable to the matters specified in paragraphs (a) to (c),
 - (e) the effects of established programmes funded by the Secretary of State, licence holders in the relevant energy markets or otherwise that, in the opinion of the Secretary of State, are relevant to the purpose of this Act, and 20
 - (f) such other matters as appear to the Secretary of State to be relevant.
- (3) Before establishing or revising strategic targets under subsection (1), the Secretary of State shall consult— 25
- (a) the National Assembly for Wales,
 - (b) the Scottish Ministers, and
 - (c) the Authority.
- (4) The Secretary of State shall publish strategic targets as established or revised under subsection (1) in such manner as he considers appropriate. 30

3 Other duties of the Secretary of State

- (1) It shall be the duty of the Secretary of State, in order to further the purpose of this Act, to—
- (a) to promote awareness of the new licence arrangements, 35
 - (b) to promote established programmes funded by the Secretary of State, licence holders in the relevant energy markets or otherwise that, in the opinion of the Secretary of State, are relevant to the purpose of this Act, and
 - (c) to promote arrangements for planning and development that increase the suitability of new housing developments for the supply of gas, electricity and domestic energy efficiency services under the new licence arrangements. 40
- (2) In this section—
- “domestic energy efficiency services” means services other than the supply of gas or electricity provided under a domestic energy efficiency 45

licence (within the meaning given in section 7A(1A) of the 1986 Act or section 6(1)(da) of the 1989 Act as the case may be);

“the new licence arrangements” means the arrangements for and in connection with domestic energy efficiency licences under Part 1 of the 1986 Act (as amended by section 6 of this Act) and under Part 1 of the 1989 Act (as amended by section 7 of this Act). 5

4 Annual reports under section 1 of the 2003 Act

- (1) The 2003 Act is amended as follows.
- (2) In section 1 (annual reports on progress towards sustainable energy aims), in subsection (1A), after paragraph (a), insert – 10
 - “(aa) things done in that period in furtherance of the purpose of the Energy Markets Act 2005 (within the meaning of section 1 of that Act);”.

5 Regulatory objectives

In each of section 4AA of the 1986 Act and section 3A of the 1989 Act (the principal objective and general duties of the Secretary of State and the Authority), in subsection (5), for paragraph (ba), substitute – 15

- “(ba) to create sustainable energy markets;
 - (bb) to promote the purpose of the Energy Markets Act 2005 (within the meaning of section 1 of that Act), having due regard to strategic targets as established or revised by the Secretary of State under section 2 of that Act; and”.
- 20

Domestic energy efficiency licences

6 Domestic energy efficiency licences: gas

- (1) The 1986 Act is amended as follows. 25
 - (2) In section 7A (licensing of gas suppliers and gas shippers) –
 - (a) after subsection (1), insert –
 - “(1A) Subject to subsection (3) below, the Authority may grant a licence authorising any person to supply the following services to any premises specified in the licence (‘a domestic energy efficiency licence’) – 30
 - (a) the supply of gas which has been conveyed through pipes to those premises,
 - (b) measures to improve the heating, cooling and thermal insulation of those premises, and 35
 - (c) other measures to improve the energy efficiency of those premises.”
 - (b) in subsection (5), after the words “subsection (1)”, insert the words “or (1A)”;
 - (c) in subsection (8), after the words “subsection (1)”, insert the words “or (1A)”;
 - (d) in subsection (9), after the words “subsection (1)”, insert the words “or (1A)”;
- 40

- (e) in subsection (11) –
- (i) after the words “subsection (1)”, insert the words “or (1A)”, and
 - (ii) for the words “either case”, substitute the words “any such case”.
- (3) In section 7B (licences: general), after subsection (4A), insert – 5
- “(4B) Without prejudice to the generality of paragraph (a) of subsection (4), conditions included in a domestic energy efficiency licence by virtue of that paragraph may –
- (a) require the licence holder to provide such services as may be specified in the licence; 10
 - (b) in particular, require the licence holder to provide such services as may be specified in the licence that are necessary –
 - (i) to secure that the number of premises that are supplied with gas under the licence that are below the thermal comfort level of SAP 70 is reduced, 15
 - (ii) to secure that the measures provided by the licence holder to improve the heating, cooling and thermal insulation of premises are additional to measures that would be provided under a licence under section 7A(1) or otherwise; 20
 - (c) in particular, require the licence holder to take such other measures as are, in the view of the Authority, appropriate in order to improve or promote domestic energy efficiency; and
 - (d) exempt the licence holder from such other licence conditions as the Authority determines to be appropriate, having regard to the considerations specified in subsection (4C). 25
- (4C) The considerations specified in this subsection are –
- (a) the extent of progress towards meeting the targets as established or revised under section 7C(1),
 - (b) the extent to which exemption from a particular condition would assist in the development of collective agreements for the supply of services under a domestic energy efficiency licence in a particular locality, and 30
 - (c) the extent to which exemption from a particular condition would assist in the provision of services to premises in new housing developments under a domestic energy efficiency licence. 35
- (4D) For the purposes of subsection (4B)(b)(i), ‘SAP’ means the Standard Assessment Procedure rating determined in accordance with the procedure described in the document entitled ‘Government’s Standard Assessment Procedure for Energy Rating of Dwellings’ (2001 edition).” 40
- (4) After section 7B, insert –
- “7C Targets for conversion of licences under section 7A(1) to domestic energy efficiency licences**
- (1) The Authority shall establish, and may from time to time revise, targets for the conversion of licences under section 7A(1) to domestic energy efficiency licences. 45

- (2) In establishing and revising targets under subsection (1), the Authority shall have regard to—
- (a) the strategic targets as established or revised by the Secretary of State under section 2(1) of the Energy Markets Act 2005,
 - (b) such information as is available to the Authority on the effect of the extent of provision of services under domestic energy efficiency licences on progress towards meeting those strategic targets, and
 - (c) such other factors as the Authority considers relevant.
- (3) Targets under subsection (1) may specify matters in relation to—
- (a) particular dates,
 - (b) numbers or proportions of premises in respect of which licences are to be converted,
 - (c) licence holders generally,
 - (d) particular classes of licence holders, or
 - (e) individual licence holders.
- 7D Arrangements for conversion of licence under section 7A(1) to domestic energy efficiency licence**
- (1) The holder of a licence under section 7A(1) may apply to convert that licence to a domestic energy efficiency licence.
- (2) The Authority may, where the conditions in subsection (3) are met, require the holder of a licence under section 7A(1) to apply to convert that licence to a domestic energy efficiency licence.
- (3) The conditions in this subsection are that—
- (a) the Authority considers it appropriate to do so in order to secure that targets as established or revised under section 7C(1) are met,
 - (b) that the holder of the relevant licence under section 7A(1) has not applied under subsection (1) to convert that licence to a domestic energy efficiency licence, and
 - (c) that the holder of the relevant licence under section 7A(1) has received written notice of the Authority’s intention to exercise its power under subsection (2) at least six months before that power is to be exercised.
- (4) An application for conversion under this section shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed.
- (5) Within the prescribed period after the making of an application for conversion, the applicant shall publish a notice of the application in the prescribed manner.
- (6) Where the Authority proposes to refuse the application, it shall give to the applicant a notice—
- (a) stating that it proposes to refuse the application;
 - (b) stating the reasons why it proposes to refuse the application; and
 - (c) specifying the time within which representations with respect to the proposed refusal may be made,

- and shall consider any representations which are duly made and not withdrawn.
- (7) Where the Authority grants a domestic energy efficiency licence in consequence of an application under this section, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant. 5
- (8) Any sums received by the Authority under or by virtue of this section shall be paid into the Consolidated Fund.
- (9) In this section ‘prescribed’ means prescribed in regulations made by the Authority.” 10
- (5) In section 8 (standard conditions of licences) –
- (a) in subsection (1), for the word “or” at the end of paragraph (b), substitute –
- “(ba) licences under subsection (1A) of section 7A above; or”; 15
- (b) in subsection (2), after the words “section 7A(1)”, insert the words “or (1A)”; and
- (c) in subsection (7), for the words “(1) or (2)”, substitute the words “(1), (1A) or (2)”.
- 7 Domestic energy efficiency licences: electricity** 20
- (1) The 1989 Act is amended as follows.
- (2) In section 6 (licences authorising supply, etc.) –
- (a) in subsection (1), for the word “or” after paragraph (d), substitute –
- “(da) a licence authorising a person to supply domestic energy efficiency services to premises (‘a domestic energy efficiency licence’); or”; 25
- (b) after subsection (2), insert –
- “(2ZA) The same person may not be the holder of both a distribution licence and a domestic energy efficiency licence.”;
- (c) in subsection (2A), for the word “(d)”, substitute the word “(da)”; 30
- (d) after subsection (4), insert –
- “(4A) A domestic energy efficiency licence may authorise the holder to supply the services specified in subsection (4B) –
- (a) to any premises;
- (b) only to premises specified in the licence, or to premises of a description so specified; or 35
- (c) only to any premises situated in a specified area, or to premises of a specified description which are so situated.
- (4B) The services specified in this subsection are – 40
- (a) the supply of electricity,
- (b) the supply of microgeneration (to premises singly or collectively),
- (c) measures to improve the heating, cooling, lighting and thermal insulation of premises, and 45

- (d) other measures to improve the energy efficiency of premises.
- (4C) The Authority may, with the consent of the holder of a domestic energy efficiency licence, modify terms included in the licence in pursuance of subsection (4A) so as to extend or restrict the premises to which the licence holder may supply the services specified in subsection (4B).”;
- (e) in subsection (7), after the word “(4)”, insert the word “(4C)”; and
- (f) in subsection (9), at the end, insert –
‘microgeneration’ has the same meaning as in section 82 of the Energy Act 2004.”
- (3) In section 6A (procedure for licence applications), in subsection (1)(b), after the word “(4)”, insert the word “(4C)”.
- (4) After section 6A, insert –
- “6ZA Targets for conversion of supply licences to domestic energy efficiency licences**
- (1) The Authority shall establish, and may from time to time revise, targets for the conversion of supply licences to domestic energy efficiency licences.
- (2) In establishing and revising targets under subsection (1), the Authority shall have regard to –
- (a) the strategic targets as established or revised by the Secretary of State under section 2(1) of the Energy Markets Act 2005,
- (b) such information as is available to the Authority on the effect of the extent of provision of services under domestic energy efficiency licences on progress towards meeting those strategic targets, and
- (c) such other factors as the Authority considers relevant.
- (3) Targets under subsection (1) may specify matters in relation to –
- (a) particular dates,
- (b) numbers or proportions of premises in respect of which licences are to be converted,
- (c) licence holders generally,
- (d) particular classes of licence holders, or
- (e) individual licence holders.
- 6ZB Conversion of supply licence to domestic energy efficiency licence**
- (1) The holder of a supply licence may apply to convert a supply licence to a domestic energy efficiency licence.
- (2) The Authority may, where the conditions in subsection (3) are met, require the holder of a supply licence to apply to convert that licence to a domestic energy efficiency licence.
- (3) The conditions in this subsection are that –
- (a) the Authority considers it appropriate to do so in order to secure that targets as established or revised under section 6ZA(1) are met,

- (b) that the holder of the relevant supply licence has not applied under subsection (1) to convert that licence to a domestic energy efficiency licence, and
- (c) that the holder of the relevant supply licence has received written notice of the Authority’s intention to exercise its power under subsection (2) at least six months before that power is to be exercised. 5
- (4) The application shall be made in such form and manner, and shall contain, or be accompanied by, such information and documents and such fee (if any), as may be prescribed. 10
- (5) Within the prescribed period after the making of the application, the applicant shall publish a notice of the application in the prescribed manner.
- (6) Where the Authority proposes to refuse the application, it shall give to the applicant a notice – 15
- (a) stating that it proposes to refuse the application;
- (b) stating the reasons why it proposes to refuse the application; and
- (c) specifying the time within which representations with respect to the proposed refusal may be made, 20
- and shall consider any representations which are duly made and not withdrawn.
- (7) Where the Authority grants a domestic energy efficiency licence in consequence of an application under this section, it shall as soon as practicable thereafter send a notice of the grant to any person who holds a licence and whose interests may, in the opinion of the Authority, be affected by the grant. 25
- (8) In this section ‘prescribed’ means prescribed in regulations made by the Authority.
- (9) Any sums received by the Authority under this section shall be paid into the Consolidated Fund.” 30
- (5) In section 7 (conditions of licences: general), after subsection (2A), insert –
- “(2B) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a domestic energy efficiency licence by virtue of that paragraph may – 35
- (a) require the licence holder to provide such services as may be specified in the licence;
- (b) in particular, require the licence holder to provide such services as may be specified in the licence that are necessary – 40
- (i) to secure that the number of premises that are supplied with electricity under the licence that are below the thermal comfort level of SAP 70 is reduced, and
- (ii) to secure that the measures provided by the licence holder to improve the heating, cooling, lighting and thermal insulation of premises are additional to measures that would be provided under a supply licence or otherwise; 45

- (c) in particular, require the licence holder to take such other measures as are, in the view of the Authority, appropriate in order to improve or promote domestic energy efficiency;
 - (d) require the licence holder to meet such conditions relating to the price of electricity supplied to him falling within subsection (2C) as may be specified in the licence; and 5
 - (e) exempt the licence holder from such other licence conditions as the Authority determines to be appropriate, having regard to the considerations specified in subsection (2D).
- (2C) A condition falls within this subsection if it relates to the differential in price between – 10
- (a) electricity sold by the holder of a domestic energy efficiency licence on the one hand, and
 - (b) electricity purchased by the holder of a domestic energy efficiency licence which was generated by microgeneration on the other. 15
- (2D) The considerations specified in this subsection are –
- (a) the extent of progress towards meeting the targets as established or revised under section 6ZA(1),
 - (b) the extent to which exemption from a particular condition would assist in the development of collective agreements for the supply of services under a domestic energy efficiency licence in a particular locality, and 20
 - (c) the extent to which exemption from a particular condition would assist in the provision of services to premises in new housing developments under a domestic energy efficiency licence. 25
- (2E) For the purposes of subsection (2B)(b)(i), ‘SAP’ means the Standard Assessment Procedure rating determined in accordance with the procedure described in the document entitled ‘Government’s Standard Assessment Procedure for Energy Rating of Dwellings’ (2001 edition).” 30

Electricity transmission

8 Additional standard condition for transmission licence

- (1) The Secretary of State shall determine an additional standard condition in relation to transmission licences for the purpose of reducing the differential in price between – 35
- (a) electricity sold by the holder of a transmission licence on the one hand, and
 - (b) electricity purchased by the holder of a transmission licence from the holder of a distribution licence, a supply licence or a domestic energy efficiency licence on the other. 40
- (2) The Secretary of State shall publish the condition determined under subsection (1) in such manner as he considers appropriate.
- (3) A condition published in accordance with subsection (2) shall be a standard condition for the purposes of transmission licences, subject to any modifications of the standard conditions for the purposes of licences of that type made – 45

- (a) under Part 1 of the 1989 Act, or
 (b) under the 2004 Act,
 after the determination under subsection (1).
- (4) Section 137(4) of the 2004 Act (provisions of standard conditions) applies to a condition under this section as it applies to a condition to which that subsection relates. 5
- (5) After section 8A(1A) of the 1989 Act, insert—
 “(1ZB) Subject to subsection (2), each condition which by virtue of section 8 of the Energy Markets Act 2005 is a standard condition for the purposes of transmission licences shall be incorporated by reference in each transmission licence granted on or after the day on which section 8 of that Act comes into force.” 10
- (6) In this section “distribution licence”, “supply licence”, “domestic energy efficiency licence” and “transmission licence” have the meanings given in section 6(1) of the 1989 Act (licences authorising supply, etc.). 15

Miscellaneous and final provisions

9 Consequential amendments

The Schedule (which contains consequential amendments) shall have effect.

10 Interpretation

- In this Act— 20
- “the 1986 Act” means the Gas Act 1986 (c. 44);
 “the 1989 Act” means the Electricity Act 1989 (c. 29);
 “the 2003 Act” means the Sustainable Energy Act 2003 (c. 30);
 “the 2004 Act” means the Energy Act 2004 (c. 20);
 “the Authority” means the Gas and Electricity Markets Authority; 25
 “the relevant energy markets” means—
- (a) the gas supply market regulated under Part 1 of the 1986 Act (gas supply), and
 (b) the electricity market regulated under Part 1 of the 1989 Act (electricity supply). 30

11 Financial provisions

- (1) *There shall be paid out of money provided by Parliament any expenditure incurred by the Secretary of State by virtue of this Act.*
- (2) *Any sums received by the Authority under or by virtue of any enactment the receipt of which is attributable to this Act shall be paid into the Consolidated Fund.* 35

12 Short title, commencement and extent

- (1) This Act may be cited as the Energy Markets Act 2005.
- (2) Sections 2 to 9 shall come into force on such date as the Secretary of State may by order determine.

-
- (3) The power of the Secretary of State to make an order under subsection (2) is a power exercisable by statutory instrument.
 - (4) The power conferred under subsection (2) includes power –
 - (a) to make different provision for different cases (including different provision in respect of different areas); 5
 - (b) to bring provisions into force in relation to a specified area or a specified description of persons for the purpose of conducting a trial of the arrangements under which the provisions will have effect when brought into force in relation to other areas or descriptions of persons;
 - (c) to make provision subject to such exemptions and exceptions as the Secretary of State thinks fit; and 10
 - (d) to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks fit.
 - (5) This Act does not extend to Northern Ireland.

SCHEDULE

Section 9

CONSEQUENTIAL AMENDMENTS

Electricity and Gas (Modifications of Standard Conditions of Licences) Order 2003

- 1 (1) The Electricity and Gas (Modifications of Standard Conditions of Licences) Order 2003 (S.I. 2003/1746) is amended as follows. 5
- (2) In Article 3(3) (registered metering points), at the end, insert the words “or of a domestic energy efficiency licence granted by the Authority under section 6(1)(da) of the Electricity Act 1989”.

Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004 10

- 2 (1) The Electricity (Applications for Licences, Modifications of an Area and Extensions and Restrictions of Licences) (No. 2) Regulations 2004 (S.I. 2004/2592) are amended as follows.
- (2) In regulation 3 (interpretation) –
- (a) in paragraph (1), after the words “a supply licence” on each occasion where they occur, insert the words “or a domestic energy efficiency licence”; and 15
- (b) in paragraph (2)(a), after the words “a supply licence”, insert the words “, a domestic energy efficiency licence”.
- (3) In Schedule 1, in paragraph 1(4), after the words “a supply licence”, insert the words “, a domestic energy efficiency licence”. 20
- (4) In Part 4 of Schedule 2, after the words “a supply licence” on each occasion where they occur, insert the words “or a domestic energy efficiency licence”.

Electricity and Gas (Energy Efficiency Obligations) Order 2004

- 3 (1) The Electricity and Gas (Energy Efficiency Obligations) Order 2004 (S.I. 2004/3392) is amended as follows. 25
- (2) In Article 1(3) (further interpretative provisions), after the words “Gas Act 1986”, insert the words “or a domestic energy efficiency licence under section 6(1)(da) of the Electricity Act 1989”.

Energy Markets Bill

A

B I L L

To promote sustainable energy and energy efficiency; to make further provision about the regulation of the gas and electricity supply industries and about electricity transmission; and for connected purposes.

*Presented by Alan Simpson
supported by
Sir Sydney Chapman, Mr David Drew,
Dr Brian Iddon, Brian White, Sue Doughty,
Alice Mahon, Mr Michael Weir, Dr Ian Gibson,
Adam Price and Llew Smith.*

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