

Energy Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Energy and Climate Change, are published separately as HL Bill 33 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Marland has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Energy Bill [HL] are compatible with the Convention rights.

Energy Bill [HL]

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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; 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 decommissioning of nuclear sites; about the powers of the Coal Authority; for the repeal of measures relating to home energy efficiency; 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:—

PART 1

ENERGY EFFICIENCY

CHAPTER 1

GREEN DEAL

Introductory

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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—

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- (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 – 5
- (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, 10
- (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. 15
- (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 – 20
- (a) made by the person who is for the time being liable to pay the energy bills for the property, and
- (b) made to the relevant energy supplier through the energy bills for the property.
- (7) Subsection (6) applies irrespective of whether the person referred to in paragraph (a) is the person who entered into the plan. 25
- (8) Subsection (6) is subject to –
- (a) provision made in regulations under section 30;
- (b) any suspension or cancellation, by virtue of provision made in regulations under section 3(3)(h) or (i), 6(4), 14 or 31, of liability to make payments. 30
- (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.
- 2 Green deal plans: supplementary**
- (1) This section applies for the purposes of this Chapter. 35
- (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 – 40
- (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); 5
 - (ii) any other measures for increasing the amount of electricity generated, or heat produced, using low-emissions sources or technologies; 10
 - (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 – 15
 - (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; 20
 - (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.
- (7) For the purposes of subsection (5)(b)(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. 25
- (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. 30
- (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. 35

3 Framework regulations

- (1) The Secretary of State may by regulations establish a scheme making provision for the Secretary of State – 40
 - (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”). 45

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- (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; 5
 - (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; 10
 - (d) for the issuing 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 of 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; 15
 - (g) requiring that an agreement mentioned in paragraph (f) be approved by the Secretary of State before being entered into; 20
 - (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. 25
- (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; 30
 - (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; 35
 - (f) as to the provision of information by green deal providers to improvers and bill payers and prospective improvers and bill payers;
 - (g) as to marketing in connection with green deal plans. 40
- (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. 45

- (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; 5
 - (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. 10
- (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. 15
- (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.

Green deal plan 20

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. 25
- (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. 30
- (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. 35
- (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. 40
- (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.

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- (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).
- (10) In subsection (2) the reference to a qualifying assessment is to be read in accordance with section 3(9). 10
- 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. 15
- (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 interval at which, and period for which, they are payable;
 - (ii) such other matters as are specified in the regulations; 20
 - (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. 25
- (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; 30
 - (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 30, or provision made under them); 35
 - (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. 40
- (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 45

- 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, 5
 - (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. 10
- (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).

6 Consents and redress etc

- (1) The framework regulations may make provision for dealing with cases where – 15
- (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”). 20
- (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. 25
- (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. 30
- (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; 35
 - (c) require an improver to pay compensation to the green deal provider in respect of the suspension, cancellation or refund.

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. 40
- (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.

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- (3) The second condition is that –
- (a) the improvements installed meet the standard specified in the code of practice issued for the purposes of the scheme under the framework regulations, and
 - (b) if a list is annexed by the Secretary of State to the code of practice, the improvements installed are specified in the list. 5
- (4) The third condition is that the carrying out of the installation meets the standard specified in the code of practice.

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. 10
- (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 15
 - (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 whichever of the following actions the framework regulations require in the circumstances – 20
- (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 25
 - (c) securing that a document of such a description is amended.
- (5) Sections 9 and 10 make further provision in relation to the second condition.

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. 30
- (2) The framework regulations may make provision for the 2007 Regulations to have effect in connection with the documents required to be produced or amended by virtue of section 8(4)(b) or (c), with the modifications specified in the framework regulations. 35
- (3) The modifications made by virtue of subsection (2) may, in particular, include –
- (a) requiring a document to contain additional information in connection with the plan; 40
 - (b) making provision about the period for which a document must be entered onto the register maintained under Part 6 of the 2007 Regulations;
 - (c) imposing a requirement to pay a fee.

- (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).

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. 5
- (2) The Scottish Ministers may by regulations make provision for the 2008 Regulations to have effect in connection with the documents required to be produced or amended by virtue of section 8(4)(b) or (c), with the modifications specified in the regulations. 10
- (3) The modifications made by virtue of subsection (2) may, in particular, include—
- (a) requiring a document to contain additional information in connection with the plan; 15
 - (b) making provision about the period for which a document must be entered onto the register maintained under regulation 10 of the 2008 Regulations;
 - (c) imposing a requirement to pay a fee.
- (4) In this section “the 2008 Regulations” means the Energy Performance of Buildings (Scotland) Regulations 2008 (S.S.I 2008/309). 20

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 amended in accordance with the regulations. 25
- (2) Subsection (3) applies if—
- (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, and
 - (b) provision is made in the regulations by virtue of section 9(3)(a) modifying the effect of the 2007 Regulations to require a document of that description to contain additional information. 30
- (3) The framework regulations may make provision—
- (a) for the 2007 Regulations to have effect with the further modifications specified in the framework regulations; 35
 - (b) as to the circumstances in which they are to so have effect.
- (4) The modifications made by virtue of subsection (3)(a) may, in particular, include—
- (a) requiring the additional information to be amended;
 - (b) imposing a requirement to pay a fee. 40
- (5) Subsection (6) applies if—
- (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 regulations by virtue of section 10(3)(a) modifying the effect of the 2008 Regulations to require a document of that description to contain additional information.
- (6) The Scottish Ministers may by regulations make provision –
- (a) for the 2008 Regulations to have effect with the further modifications specified in the regulations; 5
- (b) as to the circumstances in which they are to so have effect.
- (7) The modifications made by virtue of subsection (6)(a) may, in particular, include –
- (a) requiring the additional information to be amended; 10
- (b) imposing a requirement to pay a fee.
- (8) In subsections (2) and (3) “the 2007 Regulations” has the same meaning as in section 9.
- (9) In subsections (5) and (6) “the 2008 Regulations” has the same meaning as in section 10. 15

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 – 20
- (i) under a tenancy or licence agreement, 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 –
- (a) obtain the document mentioned in section 8(4) or, if that provision 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 25
- (b) provide the document free of charge to any prospective buyer, tenant or licensee at the specified time. 30
- (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, 35
- (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 – 40
- (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. 5
- (6) The Secretary of State may make regulations specifying cases or circumstances in which subsection (2) does not apply.

13 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 10
 - (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. 15
- (3) Subsections (4) and (5) apply where the green deal property is in England or Wales. 20
- (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. 25
- (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. 30
- (9) In this section references to a green deal property are to be read in accordance with section 12(5)(b).

14 Sanctions for non-compliance with section 12 or 13

- (1) The Secretary of State may make regulations –
- (a) for the purpose of securing compliance with the obligations set out in sections 12 and 13; 35
 - (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); 40
 - (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 or prospective landlord or licensor to pay compensation to a green deal provider in respect of any such suspension, cancellation or refund.

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Modifying energy licences

15 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); 10
 - (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; 15
 - (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. 20
- (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 25
 - (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, 35
 - (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, 40
 - (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 enabling payments to be made by or to the holder of the licence in respect of functions discharged in connection with green deal payments. 45

- (4) 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.

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16 Power to modify energy supply licences to make provision as to default in green deal payments

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- (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 15(4).

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17 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

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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 requiring, at specified times, the holder of the licence to provide bill payers with specified information in connection with their green deal plans. 5
- (3) The power may be exercised so as to require information to be provided in a specified form.

18 Power to modify energy supply licences to make provision as to consumer protection

- (1) The Secretary of State may modify – 10
 - (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); 15
 - (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. 20
- (2) The power under subsection (1) may be exercised for the purpose only of making provision corresponding to that made by the disapplied consumer protection legislation. 25
- (3) For the purposes of subsection (2) provision corresponds to that made by the disapplied consumer protection legislation if it is made for the same purpose as the purpose for which that provision was made.
- (4) For the purposes of this section references to the disapplied consumer protection legislation are to the provisions of the Consumer Credit Act 1974 which would have applied if the amendment made by section 24 had not been made. 30

19 Powers under sections 15 to 18: consultation

- (1) Before making a modification under any of sections 15 to 18, the Secretary of State must consult – 35
 - (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) Subsection (1) may be satisfied by consultation before, as well as consultation after, the passing of this Act. 40

20 Powers under sections 15 to 18: supplementary

- (1) This section applies in relation to the powers under sections 15 to 18.
- (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. 5
- (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. 10
- (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. 15
- (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. 20

Gas and electricity codes

21 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 – 25
 - (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” 30
- (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.” 35
- (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 – 40
 - (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”.

22 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). 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 – 10
- (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”. 15
- (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, 20
- (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”. 25

Modifying consumer credit legislation

23 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. 30
- (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 35
- (c) the agreement is a green deal plan (within the meaning of section 1 of the Energy Act 2011).”
- (3) In subsection (2) after “If an agreement” insert “falling within subsection (1)”. 40

- (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”.
- 24 Energy suppliers not to be treated as carrying on ancillary credit business** 5
- 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. 10
- (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 – 15
- (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.”
- 25 Duties to give debtors information and statements** 20
- (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). 25
- (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). 30
- (2B) Any duty imposed on the creditor by this section may be discharged by another person acting on the creditor’s behalf.”
- (4) In section 77B (statement of account to be provided on request in relation to fixed-sum credit agreement) after subsection (7) insert – 35
- “(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.”

26 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). 5
- (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 10
 - (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.” 15

27 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. 20
- (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.

Delegation of functions to public body 25

28 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; 30
 - (b) any function exercisable under the framework regulations by virtue of section 6(4);
 - (c) any function under section 7(3)(b) of annexing a list to the code of practice for the purposes of the scheme; 35
 - (d) any function under regulations made under section 14.
- (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), the code must not be issued unless the Secretary of State has approved it.
- (3) The Secretary of State may by order make provision conferring administration functions on – 40
- (a) the Secretary of State;

- (b) a public body specified in the order.
- (4) For the purposes of subsection (3) 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 15(3) of this Act. 5
- (5) An order made by virtue of subsection (1) or (3)(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.
- (6) The Secretary of State may make payments to any public body specified in an order made by virtue of subsection (1). 10

29 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 28(1)(a).
- (2) The Secretary of State may make regulations requiring the body specified in relation to that function in the order to – 15
 - (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. 20

General

30 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; 25
 - (b) the circumstances in which the suspension of any 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. 30
- (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; 35
 - (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). 40
- (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. 5

31 Appeals

- (1) This section applies if provision is included in a scheme or regulations by virtue of any of the following – 10
 - (a) section 3(3)(h) or (i);
 - (b) section 6(4);
 - (c) section 14.
- (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). 15
- (3) Regulations under this section 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; 20
 - (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; 25
 - (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 – 30
 - (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; 35
 - (e) to award costs.
- (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 this section may revoke or amend any subordinate legislation. 40
- (6) In this section –
 - (a) “specified public body” means a public body specified in an order made by virtue of section 28(1);
 - (b) “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978. 45

32 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. 5

33 Regulations and orders

- (1) Regulations and orders under this Chapter may make different provision for different cases or circumstances or for different purposes. 10
- (2) Regulations and orders under this Chapter 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. 15
- (4) Subsection (3) does not apply to a statutory instrument containing –
 - (a) the framework regulations,
 - (b) regulations under section 10(2), 11(6) or 13(7) or (8),
 - (c) regulations under section 14, 30 or 31, or
 - (d) an order under section 27. 20
- (5) A statutory instrument containing regulations or an order falling within subsection (4)(a), (c) or (d) 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) A statutory instrument containing regulations falling within subsection (4)(b) is subject to annulment in pursuance of a resolution of the Scottish Parliament. 25
- (7) 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; 30
 - (b) in any other case, consult the Scottish Ministers.
- (8) Before making regulations or an order under this Chapter applying to Wales, the Secretary of State must consult the Welsh Ministers. 35

34 Crown application: Chapter 1

This Chapter binds the Crown.

CHAPTER 2

PRIVATE RENTED SECTOR: ENGLAND AND WALES

Introductory

- 35 Meaning of “domestic PR property” and “non-domestic PR property”:
 England and Wales** 5
- (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, or 10
- (ii) under a tenancy which is a regulated tenancy for the purposes of the Rent Act 1977;
- (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 15
- (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, or 20
- (b) 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) or any regulations replacing those regulations (“the Energy Performance Regulations”). 25
- (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”. 30
- 36 Review of energy efficiency in the private rented sector: England and Wales**
- (1) A review under this section is a review of the energy efficiency of domestic PR properties and non-domestic PR properties (referred to in this Chapter as “PR properties”).
- (2) The Secretary of State must conduct the review, or arrange for the review to be conducted on behalf of the Secretary of State by another person. 35
- (3) If the Secretary of State arranges for another person to conduct the review –
- (a) that person must conduct the review in accordance with any directions given by the Secretary of State, and
- (b) the arrangement may include provision for payments to be made by the Secretary of State to the person. 40

- (4) The review must not be commenced before the end of the period of one year beginning with the day on which regulations under section 3 (green deal framework regulations) first come into force in relation to England and Wales.
- (5) The review must include –
 - (a) a comparison of the energy efficiency of PR properties with the energy efficiency of properties in England and Wales which are not PR properties; 5
 - (b) a consideration of the extent to which financial assistance is available to landlords of PR properties for the purpose of taking measures to improve the energy efficiency of their properties; 10
 - (c) a consideration of the need for action to be taken for the purpose of improving the energy efficiency of PR properties;
 - (d) a consideration of the possible effects of any action recommended to be taken as a result of the consideration required by paragraph (c).
- (6) A report of the review must be published before 1 April 2014. 15

Domestic energy efficiency regulations

37 Power to make domestic energy efficiency regulations: England and Wales

- (1) The power of the Secretary of State to make regulations under this section is exercisable only –
 - (a) after the publication of the report under section 36(6), and 20
 - (b) if, having regard to the report, the Secretary of State considers that the regulations –
 - (i) will improve the energy efficiency of the domestic PR properties to which the regulations relate, and
 - (ii) will not decrease the number of properties available for rent. 25
- (2) The Secretary of State may make regulations requiring local authorities to issue the notice mentioned in subsection (3) to the landlord of each domestic PR property –
 - (a) which is of such description of domestic PR property as is provided for by the regulations, 30
 - (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.
- (3) The notice is one requiring the landlord to make to the property such relevant energy efficiency improvements as are identified by the notice. 35
- (4) The regulations may –
 - (a) provide for the steps which each local authority must take to identify the properties in relation to which a notice should be issued, and
 - (b) provide for the duty to issue a notice not to apply in such circumstances as may be provided for by the regulations. 40
- (5) Regulations under this section are referred to in this Chapter as “domestic energy efficiency regulations”.
- (6) For the purposes of domestic energy efficiency regulations –

“energy performance certificate” has the meaning given by the Energy Performance Regulations;	
“landlord” and “local authority” have the meaning given by the regulations; and	
“relevant energy efficiency improvements” means improvements which—	5
(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,	10
(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	15
(iv) financed by such other description of financial arrangement as the regulations provide.	
(7) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (6).	20
(8) Domestic energy efficiency regulations may come into force no earlier than 1 April 2015.	
38 Further provision about domestic energy efficiency regulations: England and Wales	
(1) Domestic energy efficiency regulations may, in particular, include provision about—	25
(a) the form, content and service of the notice to be issued under the regulations;	
(b) the form, content and service of any response by the landlord to a notice (including the period within which any response must be given);	30
(c) the circumstances in which, and the method by which, a local authority may or must withdraw a notice;	
(d) the period within which the improvements required by a notice must be started or completed;	
(e) exemptions from any requirement imposed by or under the regulations;	35
(f) evidence relating to any requirement imposed by or under the regulations.	
(2) Provision falling within subsection (1)(e) includes, in particular, provision about exemptions—	40
(a) relating to any necessary permissions or consents;	
(b) relating to the likely negative impact on the value of a property of complying with the notice.	
(3) Provision falling within subsection (1)(f) includes, in particular, provision about evidence for the purpose of demonstrating—	45
(a) compliance with a notice;	
(b) an exemption from a requirement imposed by or under the regulations;	

- (c) that a property is not one in relation to which the local authority had power to issue a notice;
 - (d) that the improvements required by a notice are not relevant energy efficiency improvements within the meaning given by the regulations.
- 39 Sanctions for the purposes of domestic energy efficiency regulations: England and Wales** 5
- (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 about – 10
 - (a) the sanctions for non-compliance with a requirement imposed by or under the regulations;
 - (b) the sanctions for the provision of false information in connection with such a requirement; 15including, in both cases, 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. 20
 - (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; 25
 - (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; 30
 - (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 – 35
 - (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. 40
 - (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978. 45

Tenants’ energy efficiency improvements regulations

40 Power to make tenants’ energy efficiency improvements regulations: England and Wales

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|--|----|
| (1) The power of the Secretary of State to make regulations under this section is exercisable only – | 5 |
| (a) after the publication of the report under section 36(6), and | |
| (b) if, having regard to the report, the Secretary of State considers that the regulations – | |
| (i) will improve the energy efficiency of the domestic PR properties to which the regulations relate, and | 10 |
| (ii) will not decrease the number of properties available for rent. | |
| (2) The Secretary of State may 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 (3). | 15 |
| (3) 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. | |
| (4) Regulations under this section are referred to in this Chapter as “tenants’ energy efficiency improvements regulations”. | |
| (5) For the purposes of tenants’ energy efficiency improvements regulations – | 20 |
| “landlord” and “tenant” have the meaning given by the regulations; and | |
| “relevant energy efficiency improvements” means improvements which – | |
| (a) are of such description as the regulations provide, and | |
| (b) can be – | 25 |
| (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, | 30 |
| (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. | 35 |
| (6) Tenants’ energy efficiency improvements regulations may come into force no earlier than 1 April 2015. | |

41 Further provision about tenants’ energy efficiency improvements regulations: England and Wales

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| (1) Tenants’ energy efficiency improvements regulations may, in particular, include provision about – | 40 |
| (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); | 45 |

- (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 – 5
- (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 – 10
- (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. 15

42 Sanctions for the purposes of tenants’ energy efficiency improvements regulations: England and Wales

- (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. 20
- (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. 25
- (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; 30
 - (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); 35
 - (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. 40
- (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; 45
 - (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. 5
- (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; 10
 - (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 – 15
- (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. 20
- (8) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978.

Non-domestic energy efficiency regulations

- 43 Power to make non-domestic energy efficiency regulations: England and Wales** 25
- (1) The power of the Secretary of State to make regulations under this section is exercisable only –
- (a) after the publication of the report under section 36(6), and
 - (b) if, having regard to the report, the Secretary of State considers that the regulations – 30
 - (i) will improve the energy efficiency of the non-domestic PR properties to which the regulations relate, and
 - (ii) will not decrease the number of properties available for rent.
- (2) The Secretary of State may make regulations for the purpose of securing that a landlord of a non-domestic PR property – 35
- (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, 40
- may not let the property until the landlord has complied with the obligation mentioned in subsection (3).
- (3) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations. 45

- (4) Regulations under this section are referred to in this Chapter as “non-domestic energy efficiency regulations”.
 - (5) For the purposes of non-domestic energy efficiency regulations –
 - “energy performance certificate” has the meaning given by the Energy Performance Regulations; 5
 - “landlord”, “let the property” and “tenant” have the meaning given by the regulations; and
 - “relevant energy efficiency improvements” means improvements which –
 - (a) are of such description as the regulations provide, and 10
 - (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. 15
 - (6) The Secretary of State may by order amend the definition of “energy performance certificate” in subsection (5).
 - (7) Non-domestic energy efficiency regulations may come into force no earlier than 1 April 2015.
- 44 Further provision about non-domestic energy efficiency regulations: England and Wales 20**
- (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; 25
 - (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 – 30
 - (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 – 35
 - (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. 40

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- 45 Sanctions for the purposes of non-domestic energy efficiency regulations: England and Wales**
- (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. 5
- (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;
 - (b) about the sanctions for non-compliance with a requirement imposed by or under the regulations; 10
 - (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. 15
- (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; 20
 - (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; 25
 - (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 – 30
- (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. 35
- (7) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978. 40

General

46 Regulations and orders: England and Wales

- (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. 5
- (3) A statutory instrument containing an order under this Chapter is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing 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. 10

47 Crown application: Chapter 2

This Chapter binds the Crown.

CHAPTER 3

PRIVATE RENTED SECTOR: SCOTLAND 15

Introductory

**48 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 applies; 20
 - (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 25
 - (iii) is not a dwelling.
- (2) In subsection (1)(b) “dwelling” has the meaning given by the Energy Performance of Buildings (Scotland) Regulations 2008 or any regulations replacing those regulations (“the Energy Performance (Scotland) Regulations”). 30
- (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”.

49 Review of energy efficiency in the private rented sector: Scotland 35

- (1) A review under this section is a review of the energy efficiency of Scottish domestic PR properties and Scottish non-domestic PR properties (referred to in this Chapter as “Scottish PR properties”).

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- (2) The Scottish Ministers must conduct the review, or arrange for the review to be conducted on behalf of the Scottish Ministers by another person.
- (3) If the Scottish Ministers arrange for another person to conduct the review –
- (a) that person must conduct the review in accordance with any directions given by the Scottish Ministers, and 5
 - (b) the arrangement may include provision for payments to be made by the Scottish Ministers to the person.
- (4) The review must not be commenced before the end of the period of one year beginning with the day on which regulations under section 3 (green deal framework regulations) first come into force in relation to Scotland. 10
- (5) The review must include –
- (a) a comparison of the energy efficiency of Scottish PR properties with the energy efficiency of properties in Scotland which are not Scottish PR properties;
 - (b) a consideration of the extent to which financial assistance is available to landlords of Scottish PR properties for the purpose of taking measures to improve the energy efficiency of their properties; 15
 - (c) a consideration of the need for action to be taken for the purpose of improving the energy efficiency of Scottish PR properties;
 - (d) a consideration of the possible effects of any action recommended to be taken as a result of the consideration required by paragraph (c). 20
- (6) A report of the review must be published before 1 April 2014.

Scottish domestic energy efficiency regulations

50 Power to make domestic energy efficiency regulations: Scotland

- (1) The power of the Scottish Ministers to make regulations under this section is exercisable only – 25
- (a) after the publication of the report under section 49(6), and
 - (b) if, having regard to the report, the Scottish Ministers consider that the regulations –
 - (i) will improve the energy efficiency of the Scottish domestic PR properties to which the regulations relate, and 30
 - (ii) will not decrease the number of properties available for rent.
- (2) The Scottish Ministers may make regulations requiring local authorities to issue the notice mentioned in subsection (3) to the landlord of each Scottish domestic PR property – 35
- (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. 40
- (3) The notice is one requiring the landlord to make to the property such relevant energy efficiency improvements as are identified by the notice.
- (4) The regulations may –

- (a) provide for the steps which each local authority must take to identify the properties in relation to which a notice should be issued, and
 - (b) provide for the duty to issue a notice not to apply in such circumstances as may be provided for by the regulations.
- (5) Regulations under this section are referred to in this Chapter as “Scottish domestic energy efficiency regulations”. 5
- (6) For the purposes of Scottish domestic energy efficiency regulations –
 - “energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;
 - “landlord” has the meaning given by the regulations; 10
 - “local authority” means a local authority constituted under section 2(1) of the Local Government etc. (Scotland) Act 1994; and
 - “relevant energy efficiency improvements” means improvements which –
 - (a) are of such description as the regulations provide, and 15
 - (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, 20
 - (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. 25
- (7) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (6).
- (8) Scottish domestic energy efficiency regulations may come into force no earlier than 1 April 2015. 30

51 Further provision about domestic energy efficiency regulations: Scotland

- (1) Scottish domestic energy efficiency regulations may, in particular, include provision about –
 - (a) the form, content and service of the notice to be issued under the regulations; 35
 - (b) the form, content and service of any response by the landlord to a notice (including the period within which any response must be given);
 - (c) the circumstances in which, and the method by which, a local authority may or must withdraw a notice;
 - (d) the period within which the improvements required by a notice must be started or completed; 40
 - (e) exemptions from any requirement imposed by or under the regulations;
 - (f) evidence relating to any requirement imposed by or under the regulations. 45
- (2) Provision falling within subsection (1)(e) 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 the notice.
- (3) Provision falling within subsection (1)(f) includes, in particular, provision about evidence for the purpose of demonstrating – 5
- (a) compliance with a notice;
 - (b) an exemption from a requirement imposed by or under the regulations;
 - (c) that a property is not one in relation to which the local authority had power to issue a notice;
 - (d) that the improvements required by a notice are not relevant energy efficiency improvements within the meaning given by the regulations. 10
- 52 Sanctions for the purposes of domestic energy efficiency regulations: Scotland**
- (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. 15
- (2) Provision falling within subsection (1) includes, in particular, provision about – 20
- (a) the sanctions for non-compliance with a requirement imposed by or under the regulations;
 - (b) the sanctions for the provision of false information in connection with such a requirement;
- including, in both cases, 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. 25
- (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.
- (5) Provision falling within subsection (4) includes, in particular, provision – 30
- (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; 35
 - (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 – 40
- (a) to confirm the penalty;
 - (b) to withdraw the penalty;
 - (c) to vary the amount of the penalty;
 - (d) to award costs. 45

- (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. 5
- (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 10

53 Power to make tenants’ energy efficiency improvements regulations: Scotland

- (1) The power of the Scottish Ministers to make regulations under this section is exercisable only –
- (a) after the publication of the report under section 49(6), and 15
 - (b) if, having regard to the report, the Scottish Ministers consider that the regulations –
 - (i) will improve the energy efficiency of the Scottish domestic PR properties to which the regulations relate, and
 - (ii) will not decrease the number of properties available for rent. 20
- (2) 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 (3).
- (3) 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. 25
- (4) Regulations under this section are referred to in this Chapter as “Scottish tenants’ energy efficiency improvements regulations”.
- (5) For the purposes of Scottish tenants’ energy efficiency improvements regulations – 30
- “landlord” and “tenant” have the meaning given by the regulations; and
 - “relevant energy efficiency improvements” means improvements which –
 - (a) are of such description as the regulations provide, and
 - (b) can be – 35
 - (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, 40
 - (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. 45

- (6) Scottish tenants’ energy efficiency improvements regulations may come into force no earlier than 1 April 2015.

54 Further provision about tenants’ energy efficiency improvements regulations: Scotland

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|---|----|
| (1) Scottish tenants’ energy efficiency improvements regulations may, in particular, include provision about – | 5 |
| (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); | 10 |
| (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 – | 15 |
| (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 – | 20 |
| (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. | 25 |

55 Sanctions for the purposes of tenants’ energy efficiency improvements regulations: Scotland

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|---|----|
| (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. | 30 |
| (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. | 35 |
| (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; | 40 |
| (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); | 45 |

- (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
- (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; 10
 - (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; 15
 - (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; 20
 - (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. 25
- (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. 30
- (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. 35

Scottish non-domestic energy efficiency regulations

56 Power to make non-domestic energy efficiency regulations: Scotland

- (1) The power of the Scottish Ministers to make regulations under this section is exercisable only – 40
- (a) after the publication of the report under section 49(6), and
 - (b) if, having regard to the report, the Scottish Ministers consider that the regulations –
- (i) will improve the energy efficiency of the Scottish non-domestic PR properties to which the regulations relate, and 45

- (ii) will not decrease the number of properties available for rent.
- (2) The Scottish Ministers may make regulations for the purpose of securing that a landlord of a Scottish non-domestic PR property –
- (a) which is of such description of Scottish non-domestic PR property as is provided for by the regulations, 5
 - (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 (3). 10
- (3) The obligation is to make to the property such relevant energy efficiency improvements as are provided for by the regulations.
- (4) Regulations under this section are referred to in this Chapter as “Scottish non-domestic energy efficiency regulations”. 15
- (5) For the purposes of Scottish non-domestic energy efficiency regulations –
- “energy performance certificate” has the meaning given by the Energy Performance (Scotland) Regulations;
 - “landlord”, “let the property” and “tenant” have the meaning given by the regulations; and 20
 - “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 25
 - (ii) financed by such other description of financial arrangement as the regulations provide.
- (6) The Scottish Ministers may by order amend the definition of “energy performance certificate” in subsection (5). 30
- (7) Scottish non-domestic energy efficiency regulations may come into force no earlier than 1 April 2015.

57 Further provision about non-domestic energy efficiency regulations: Scotland

- (1) Scottish non-domestic energy efficiency regulations may, in particular, include provision about – 35
- (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. 40
- (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. 45

- (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; 5
 - (c) that the improvements required by or under the regulations are not relevant energy efficiency improvements within the meaning given by the regulations.
- 58 Sanctions for the purposes of non-domestic energy efficiency regulations: Scotland 10**
- (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; 15
 - (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; 20
- 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. 25
- (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; 30
 - (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; 35
 - (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; 40
 - (b) to withdraw the penalty;
 - (c) to vary the amount of the penalty;
 - (d) to award costs.
- (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 45

would be within 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.

5

General

59 Regulations and orders: Scotland

- (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. 10
- (3) A statutory instrument containing an order under this Chapter is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (4) A statutory instrument containing regulations under this Chapter may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, the Scottish Parliament. 15

60 Crown application: Chapter 3

This Chapter binds the Crown.

CHAPTER 4

REDUCING CARBON EMISSIONS AND HOME-HEATING COSTS

20

61 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 (5) (general provision that may be included in an order imposing an obligation to achieve a carbon emissions reduction target) – 25
- (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 – 30
- (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; 35
- (bc) enabling the Authority 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 – 5
- (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; 10
- (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;” 15
- (b) in paragraph (e) 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;” 20
- (c) after paragraph (f) insert “; and
- “(g) requiring the Authority 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.” 25
- (3) After subsection (5) insert –
- “(5A) If the order makes provision by virtue of subsection (5)(bc) enabling the Authority 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 – 30
- (a) authorising the Authority 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; 35
 - (b) specifying criteria in accordance with which the Authority is to select individuals who are to be the subject of a direction;
 - (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); 40
 - (d) authorising the Authority, 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; 45
 - (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.”
- (4) After subsection (9) insert –
- “(9A) The order may make provision requiring the Authority to give guidance to transporters or suppliers concerning such matters relating to the order as are specified.
- (9B) The Authority shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.”
- (5) 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.”
- (6) 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 –
- (a) so as to add to the earlier order provision of a sort mentioned in any of paragraphs (b), (ba) or (c) of subsection (5), or
 - (b) so as to alter the provision included in the earlier order by virtue of any of those paragraphs;
- but such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (7) In subsection (13) before the definition of “microgeneration” insert –
- ““home-heating cost reduction target” has the meaning given by section 33BD(2)(a);”.
- 62 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 (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;

- (b) 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 5
 - (iv) individuals or property of a specified description in specified areas or areas of a specified description;
- (bc) enabling the Authority 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; 10
- (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 – 15
 - (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; 20
- (c) determining, or specifying the method for determining, the contribution that any action makes towards meeting a carbon emissions reduction target;” 25
- (b) in paragraph (e) 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;” 30
- (c) after paragraph (f) insert “; and
 - (g) requiring the Authority 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.” 35
- (3) After subsection (5) insert –
 - “(5A) If the order makes provision by virtue of subsection (5)(bc) enabling the Authority 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 – 40
 - (a) authorising the Authority 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; 45
 - (b) specifying criteria in accordance with which the Authority 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); 50

- (d) authorising the Authority, if it gives a direction to a distributor or supplier, to provide the distributor or supplier with information relating to the individual concerned for the purpose of assisting the distributor or supplier to comply with the direction; 5
- (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 – 10
- (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.” 15
- (4) After subsection (9) insert –
- “(9A) The order may make provision requiring the Authority to give guidance to distributors or suppliers concerning such matters relating to the order as are specified.
- (9B) The Authority shall carry out its functions under this section in accordance with any general or specific directions given to it by the Secretary of State.” 20
- (5) 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 – 25
- (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.” 30
- (6) 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 – 35
- (a) so as to add to the earlier order provision of a sort mentioned in any of paragraphs (b), (ba) or (c) of subsection (5), or
- (b) so as to alter the provision included in the earlier order by virtue of any of those paragraphs;
- but such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- (7) In subsection (13) before the definition of “microgeneration” insert – 40
- ““home-heating cost reduction target” has the meaning given by section 41B(2)(a);”.
- (8) 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. 45

63 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 5

- (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 Authority under the order for that transporter or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”). 10
- (2) In this section –
 - (a) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes; 20
 - (b) “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. 25
- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12A) of section 33BC 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”; 30
 - (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”; 35
 - (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 Authority of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section. 40
- (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.” 45

64 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** 5
- (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), 10
- 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 Authority under the order for that distributor or supplier (and that obligation is referred to in this section as a “home-heating cost reduction obligation”). 15
- (2) In this section—
- (a) “home-heating cost reduction target” means a target for the promotion of measures for reducing the cost to individuals of heating their homes; 20
 - (b) “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. 25
- (4) Subsections (3), (5) to (8), (9A) and (10A) to (12A) 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”; 30
 - (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”; 35
 - (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 Authority of their respective functions under this section as they apply to the carrying out by those persons of their functions under that section. 40
- (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.” 45

65 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 by the Authority of its functions 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 Authority to apportion the target 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
 - (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 Authority 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.”

66 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

- | | | |
|-----|---|----|
| | | 5 |
| (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; | 10 |
| (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. | 15 |
| (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. | 20 |
| (3) | Those persons are – | |
| (a) | gas transporters and gas suppliers; | 25 |
| (b) | electricity distributors and electricity suppliers; and | |
| (c) | the Authority. | |
| (4) | Information required to be provided by a notice under this section must be provided – | |
| (a) | in such form as may be specified; | 30 |
| (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. | 35 |
| (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; | 40 |
| (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. | 45 |
| (7) | 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;	5
	(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;	10
	“a home-heating cost reduction measure” is a measure of a kind mentioned in subsection (2)(a) 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.”	
67	Power of Secretary of State to transfer functions of the Gas and Electricity Markets Authority	15
	After section 103B of the Utilities Act 2000 insert –	
	“103C Transfer of Authority’s functions: carbon emissions reduction targets and home-heating cost reduction targets	
	(1) The Secretary of State may by order transfer any of the Authority’s functions under a carbon emissions reduction order or home-heating cost reduction order to another body or to the Secretary of State.	20
	(2) An order under this section transferring functions under a carbon emissions reduction order or home-heating cost reduction order may also make provision –	25
	(a) for, and in connection with, enabling the transferee to enforce any requirement imposed by the carbon emissions reduction order or home-heating cost reduction order;	
	(b) preventing the Authority from exercising its enforcement functions in relation to a requirement which may be enforced by the transferee under provision made by virtue of paragraph (a).	30
	(3) Provision made under subsection (2)(a) may, in particular, include provision corresponding to or applying (with or without modifications) any of the following provisions –	
	(a) sections 28 to 30F and section 38 of the 1986 Act;	35
	(b) sections 25 to 28 of the 1989 Act.	
	(4) In carrying out any function transferred by an order under this section, a transferee is to be treated for the purposes of the provisions of the 1986 Act, the 1989 Act and this Act as if the transferee were the Authority.	40
	(5) Before making an order under this section, the Secretary of State must 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.
- (7) The Secretary of State may make payments of such amounts as he or she considers appropriate to any body to which functions are transferred by an order under this section. 5
- (8) In this section –
 “carbon emissions reduction order” and “home-heating cost reduction order” have the same meaning as in section 103B;
 “enforcement function” means a function of the Authority under any of the provisions mentioned in paragraphs (a) or (b) of subsection (3); 10
 “transferee” means a person to whom functions are transferred by an order under this section.”
- 68 Minor and consequential amendments** 15
- Schedule 1 contains minor and consequential amendments relating to this Chapter.

CHAPTER 5

INFORMATION ABOUT ENERGY CONSUMPTION, EFFICIENCY AND TARIFFS

Smart meters 20

- 69 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,”. 25
- (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;”. 30
- (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”. 35
- (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 40

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”. 5

Energy performance certificates

- 70 Access to register of energy performance certificates etc: England and Wales** 10
- (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 – 15
- (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; 20
 - (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); 25
 - (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). 30
- (4) In subsection (2) “specified” means specified in the regulations made under this section.
- (5) Regulations under this section – 35
- (a) may make different provision for different cases or circumstances or for different purposes;
 - (b) are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament. 40
- (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.

71 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. 5
- (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; 10
 - (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; 15
 - (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). 20
- (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).
- (4) In subsection (2) “specified” means specified in the regulations made under this section. 25
- (5) Regulations under this section –
- (a) may make different provision for different cases or circumstances or for different purposes;
 - (b) are to be made by statutory instrument. 30
- (6) A statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (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. 35

Information about tariffs

72 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); 40
 - (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. 5
- (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; 10
 - (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 – 15
 - (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; 20
 - (c) how and when the information must be provided;
 - (d) the form in which it must be provided.
- (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); 25
 - (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. 30
- (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; 35
 - “domestic tariff” means a tariff under a domestic supply contract.

73 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 40
 - (c) such other persons as the Secretary of State considers appropriate.
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.

- (3) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (4) 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. 5
- (5) 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. 10
- (6) 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 section 72 of the Energy Act 2011.” 15
- (7) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences) –
- (a) for “2008 or” substitute “2008,”;
- (b) after “2010” insert “or under section 72 of the Energy Act 2011”.
- (8) In this section “modification” means a modification under section 72.
- 74 General duties of the Secretary of State 20**
- (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 72 or 73 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. 25
- (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 72 or 73 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. 30

PART 2

SECURITY OF ENERGY SUPPLIES

CHAPTER 1

ELECTRICITY SUPPLY

- 75 Annual report by Gas and Electricity Markets Authority on security of electricity supply 35**
- 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 – 40

- (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 – 5
 - (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. 10
- (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 15
 - (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 – 20
 - (a) the generation of electricity;
 - (b) the operation of electricity interconnectors;
 - (c) the storage of electricity;
 - (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; 25
 - (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 – 30
 - (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); 35
 - (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)). 40
- (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; 45

“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.”

76 Annual report by Secretary of State on security of energy supplies

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| (1) | Section 172 of the Energy Act 2004 (annual report by Secretary of State on security of energy supplies) is amended as follows. | 5 |
| (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. | 10 |
| (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. | 15 |
| (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 | 20 |
| (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; | 25 |
| (c) | the storage of electricity; | |
| (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; | 30 |
| (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.” | 35 |
| (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;”; | 40 | |
| (b) | after “distribution system,” insert ““electricity interconnector”, “generating station”, “generation”, “supply,””. | |

CHAPTER 2

GAS SUPPLY

- 77 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 – 5
- “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. 10
- (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 – 15
- (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. 20
- (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. 25
- (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; 30
- “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 undertaken before the commencement of subsection (1) of this section or the passing of this Act. 35
- (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 40

- 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
- (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 “– 10
- (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))”. 15
- (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)”. 20

CHAPTER 3

UPSTREAM PETROLEUM INFRASTRUCTURE

- 78 Acquisition of rights to use upstream petroleum infrastructure** 25
- (1) This section applies where –
- (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; 30
- (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 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. 35
- And references in this section to “the access application” are to the application made to the owner of the pipeline or facility. 40
- (2) 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; 45
- (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). 5
- (3) 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 (10) which would secure to the applicant the right sought in the access application.
- (4) The Secretary of State may not consider an application under subsection (3) unless satisfied that the applicant and the owner have had a reasonable time in which to reach agreement. 10
- (5) When considering an application under subsection (3) the Secretary of State must—
- (a) decide whether the application is to be— 15
- (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— 20
- (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; 25
- (iv) such other persons as the Secretary of State considers appropriate.
- (6) When giving further consideration to an application under subsection (3) 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; 30
- (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; 35
- (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; 40
- and
- (g) the number of parties involved in the dispute.
- (7) The Secretary of State may give a notice under subsection (10) only if the condition in subsection (8) or (9) is met.
- (8) The condition in this subsection is that the Secretary of State is satisfied that the notice will not prejudice— 45

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- (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. 5
- (9) 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 (8) 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. 10
- (10) A notice under this subsection may contain such provisions as the Secretary of State considers appropriate for any of the following purposes – 15
- (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; 20
- (d) to regulate the charges which may be made for the exercise of any right secured by the notice.
- (11) A notice under subsection (10) 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; 25
- (b) contain provision permitting a right secured or a duty imposed by the notice to be assigned.
- (12) A notice under subsection (10) is to be given to – 30
- (a) the owner and the applicant, and
- (b) if the notice contains provision of a sort mentioned in subsection (9), any person with a right to have anything conveyed by the pipeline or processed by the facility.
- (13) A notice under subsection (10) 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. 35
- (14) For the purposes of subsection (2)(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. 40
- (15) In this section and section 79 “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 45

- (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.

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79 Power of Secretary of State to give a notice under section 78(10) on own initiative

- (1) This section applies where –
 - (a) a person has made an application of a kind mentioned in subsection (1) of section 78 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 (10) of section 78 which would secure to the applicant the right sought in the application; but this is subject to subsection (7) 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 (6) of section 78;
 - (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.

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80 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 78, and
 - (b) the Secretary of State is considering whether to give a notice under subsection (10) of that section which would secure to the applicant the right sought in the application.
- (2) If it appears to the Secretary of State –
 - (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

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- (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). 5
- (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; 10
 - (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; 15
 - (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. 20
- (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 (8) of section 78 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. 25
- (5) A notice under subsection (2) which contains provision by virtue of subsection (4) must (in addition to being given to the applicant and the owner) be given to any person who has a right to have anything conveyed by the pipeline or processed by the facility. 30
- (6) 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 (6) of section 78; 35
 - (b) give the persons mentioned in subsection (7) an opportunity to be heard.
- (7) 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; 40
 - (c) the Health and Safety Executive; and
 - (d) such other persons as the Secretary of State considers appropriate.
- (8) If the Secretary of State gives a notice under subsection (2), section 78 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. 45

- (9) 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.

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81 Variation of notices under sections 78 and 80

- (1) The persons to whom a notice is given under subsection (10) of section 78 or subsection (2) of section 80 may agree to vary or set aside the notice.
- (2) The Secretary of State may vary a notice under subsection (10) of section 78 or subsection (2) of section 80 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 82, 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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82 Publication of notices and variations

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- (1) Where the Secretary of State gives a notice under subsection (10) of section 78 or subsection (2) of section 80, 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 81, 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.

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83 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 78, the Secretary of State may by notice require the person to confirm whether or not that is the case.

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- (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 78 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 78, 79, or 80; and 5
- (b) if so, how to exercise the function.
- (3) Where a person has applied to the Secretary of State under section 81 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 – 10
- (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; 15
- (b) the other person to whom the notice was given;
- (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. 20
- (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. 25
- (7) In this section “specified” means specified in a notice under subsection (2) or (3).

84 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 – 30
- (a) inducing the Secretary of State to exercise or not to exercise any of the functions conferred on the Secretary of State by sections 78 to 81; or
- (b) inducing the Secretary of State to exercise any of those functions in a particular way. 35
- (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. 40
- (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. 5
- (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. 10
- (7) The duty of a person to comply with a notice under subsection (10) of section 78 or subsection (2) of section 80 is a duty owed to any person who may be affected by a failure to comply with it. 15
- (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 83 is enforceable by civil proceedings by the Secretary of State – 20
 - (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. 25
- (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 – 30
 - (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. 35
- (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.

85 Minor, consequential and supplemental provision

- (1) Schedule 2 contains minor and consequential amendments relating to this Chapter. 40
- (2) Before exercising any power conferred by sections 78 to 81 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 (10) of section 78 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; 5
 - (b) the authorisation contains a term of a kind mentioned in section 15(5) of that Act; and
 - (c) the proposed pipeline is to be a relevant upstream petroleum pipeline. 10
- (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 78 of this Act, and 15
 - (b) if applicable, an application under subsection (3) 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 – 20
- (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 80 is omitted. 25
- (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 78.

86 Interpretation

- (1) In this Chapter – 30
- “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; 35
 - “gas processing facility” means any facility operated otherwise than by a gas transporter which carries out gas processing operations;
 - “oil processing facility” means any facility which carries out oil processing operations;
 - “payments” means payments in money or money’s worth; 40
 - “petroleum” has the same meaning as in Part 1 of the Petroleum Act 1998, and includes petroleum that has undergone any processing;
 - “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 – 45

- (a) which is operated or constructed as part of a petroleum production project;
 - (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; 5
 - (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 10
 - (c) which is used to convey gas directly from a terminal to a pipeline system operated by a gas transporter or to any premises. 15
- (2) For the purposes of this section –
- “gas processing operation” means any of the following operations –
- (a) purifying, blending, odorising 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; 20
 - (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, 25
 - (d) separating, purifying, blending, odorising 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 30
 - (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 35
 - (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);
- “gas transporter” has the meaning given by section 7(1) of the Gas Act 1986; 40
- “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; 45
 - (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 50

- 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); 5
- “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; 10
- “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; 15
- (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. 20
- 87 Meaning of “associate” for the purposes of section 78**
- (1) For the purposes of section 78(6)(d) and (8)(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, 25
- 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, 30
- (b) such rights as would entitle A to exercise one half or more of the votes exercisable in general meetings of B,
- (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 35
- (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 – 40
- (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. 45
- (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).

CHAPTER 4

SPECIAL ADMINISTRATION

88 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 89.
- (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.

89 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 – 5
- (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. 10
- (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 15
 - (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; 20
 - (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 25
 - (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. 30
- 90 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). 35
- (2) In the application of those provisions generally –
- (a) for “energy administration”, in each place where it occurs, substitute “energy supply company administration”; 40
 - (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 45

- for an energy supply company administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 90 of the Energy Act 2011”;
- (b) in paragraph 32(e), for “section 155 of the Energy Act 2004” substitute “section 89 of the Energy Act 2011”; 5
- (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 88(4) of the Energy Act 2011”;
- (d) in paragraph 43, after “the Energy Act 2004” insert “and section 90 of the Energy Act 2011”;
- (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 90 of the Energy Act 2011”; 10
- (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 90 of the Energy Act 2011”;
- (g) in paragraph 47, after “Part 1 of this Schedule” insert “and section 90 of the Energy Act 2011”. 15
- (4) In the application of Schedule 21 –
- (a) in paragraph 1(b), for “section 155(3)” substitute “section 89(3) of the Energy Act 2011”;
- (b) in paragraph 12, for “section 155” substitute “section 89 of the Energy Act 2011”. 20
- (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 – 25
- ““energy supply company” has the meaning given by section 88(5) of the Energy Act 2011;”;
- ““energy supply company administration order” has the meaning given by section 88(1) of the Energy Act 2011;”;
- ““energy supply company administration rules” means rules 30
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 90 of the Energy Act 2011;”;
- ““objective of the energy supply company administration” is to be construed in accordance with section 89 of the Energy Act 35
2011;”;
- (b) in the definition of “energy administrator” for “section 154(2)” substitute “section 88(2) of the Energy Act 2011”;
- (c) in the definition of “relevant licence” for “section 154(5)” substitute “section 88(5) of the Energy Act 2011”. 40

91 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 90 of the Energy Act 2011)”. 45

92 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; 5
 - (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— 10
 - (a) the holder of any licence being modified; and
 - (b) such other persons as the Secretary of State considers appropriate.
- (4) Subsection (3) may be satisfied by consultation that took place wholly or partly before the commencement of this section.
- (5) The Secretary of State must publish every modification made under this section. 15
- (6) The publication must be in such manner as the Secretary of State considers appropriate.
- (7) 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. 20
- (8) 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— 25
 - (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.
- (9) The Secretary of State’s powers under this section are exercisable only during the eighteen months beginning with the commencement of this section. 30
- (10) In section 81(2) of the Utilities Act 2000 (standard conditions of licences under Part 1 of the Gas Act 1986), after “72” (as inserted by section 73(7) of this Act) insert “or 92”.
- (11) In this section “gas or electricity licence” means a licence for the purposes of section 5 of the Gas Act 1986 or section 4 of the Electricity Act 1989 (prohibition on unlicensed activities). 35

93 Licence conditions to secure funding of energy supply company administration

- (1) The modifications that may be made under section 92 include, in particular, modifications imposing conditions requiring the holder of the licence— 40
 - (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.
- (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 90 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.

94 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 90 of the Energy Act 2011)”.

95 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. 5
- (2) In paragraph 46 of that Schedule, after “Chapter” insert “(including this Chapter as applied by section 90 of the Energy Act 2011)”. 10

96 Interpretation of Chapter 4

- (1) In this Chapter –
- “business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;
 - “company” means – 15
 - (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); 20
 - “energy administrator” has the meaning given by section 88(2) and is to be construed in accordance with subsection (2) of this section; 25
 - “energy supply company administration order” has the meaning given by section 88(1);
 - “energy supply company” has the meaning given by section 88(5);
 - “modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly; 30
 - “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 89;
 - “relevant licence” has the meaning given by section 88(5);
 - “subsidiary” and “wholly-owned subsidiary” have the meanings given by section 1159 of the Companies Act 2006; 35
 - “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 90 of this Act to be the energy administrator of that company; and 40
 - (b) where two or more persons are appointed to be the energy administrator of that company, are to be construed in accordance with 45

the provision made under section 158(5) of the Energy Act 2004, as applied by section 90 of this Act.

CHAPTER 5

CONTINENTAL SHELF

97 Revocation etc of designations under Continental Shelf Act 1964 5

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”.

PART 3 10

LOW CARBON GENERATION

Offshore electricity

98 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”. 15
- (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”. 20
- (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”. 25

Decommissioning nuclear sites

99 Agreement about modifying decommissioning programme

- (1) Section 46 of the Energy Act 2008 (approval of a decommissioning programme) is amended as follows. 30
- (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. 35
 - (3B) An agreement under subsection (3A) may subsequently be amended by the Secretary of State and the other party to the agreement.

- (3C) Subsections (3A) and (3B) apply notwithstanding that the agreement or amendment fetters the Secretary of State’s discretion.
- (3D) 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.” 5
- (3) In subsection (4) for “(3)” substitute “(3B)”.

PART 4

COAL AUTHORITY

100 Additional powers of the Coal Authority: England and Wales 10

- (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; 15
- (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.” 20
- (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”.

101 Additional powers of the Coal Authority: Scotland

- (1) After section 4F of the Coal Industry Act 1994 insert – 25
- “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; 30
- (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.” 35
- (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

102 Repeal of measures relating to home energy efficiency

- (1) Subject to the saving in subsection (2) of this section, the Home Energy Conservation Act 1995 ceases to have effect in England and Wales and Scotland. 5
- (2) The definitions in section 1 of that Act continue to have effect for the purposes of the Sustainable Energy Act 2003.
- (3) Section 217 of the Housing Act 2004 (energy efficiency of residential accommodation in England) ceases to have effect. 10
- (4) Schedule 3 contains repeals and revocations consequential on this section.

General

103 Extent

- (1) Subject to subsections (2) to (5), this Act extends to England and Wales and Scotland only. 15
- (2) The following provisions extend to England and Wales only –
 - (a) sections 9 and 11(2) to (4) and (8) (documents containing information about green deal plans: England and Wales),
 - (b) section 13(3) to (5) (acknowledgment of green deal plan in respect of property in England or Wales), 20
 - (c) sections 35 to 47 (private rented sector: England and Wales),
 - (d) section 70 (access to register of energy performance certificates etc: England and Wales), and
 - (e) section 100 (additional powers of the Coal Authority: England and Wales). 25
- (3) The following provisions extend to Scotland only –
 - (a) sections 10 and 11(5) to (7) and (9) (documents containing information about green deal plans: Scotland),
 - (b) section 13(6) to (8) (acknowledgment of green deal plan in respect of property in Scotland), 30
 - (c) sections 48 to 60 (private rented sector: Scotland),
 - (d) section 71 (access to register of energy performance certificates etc: Scotland), and
 - (e) section 101 (additional powers of the Coal Authority: Scotland). 35
- (4) Subject to section 102(1) and subsection (5) below, an amendment or repeal of an enactment has the same extent as the enactment amended or repealed.
- (5) The amendments made by sections 23 to 26 (green deal: modifying consumer credit legislation) extend to England and Wales and Scotland only.

104 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 made by statutory instrument appoint – 5
- (a) sections 10 and 11(5) to (7) and (9) (documents containing information about green deal plans: Scotland);
 - (b) section 13(6) to (8) (acknowledgment of green deal plan in respect of property in Scotland); 10
 - (c) sections 48 to 60 (private rented sector: Scotland);
 - (d) section 71 (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 – 15
- (a) sections 61 to 68 (reducing carbon emissions and home-heating costs);
 - (b) section 69 (smart meters);
 - (c) section 70 (access to register of energy performance certificates etc: England and Wales);
 - (d) sections 72 to 74 (information about tariffs); 20
 - (e) sections 75 and 76 (security of electricity supply);
 - (f) sections 88 to 96 (special administration);
 - (g) section 97 (designations under Continental Shelf Act 1964);
 - (h) subsection (3) of section 98 (offshore transmission and distribution of electricity); 25
 - (i) section 99 (agreement about modifying decommissioning programme).
- (4) The following provisions come into force on the day on which this Act is passed –
- (a) section 77 (modification of the Uniform Network Code);
 - (b) subsections (1) and (2) of section 98 (offshore transmission and distribution of electricity); 30
 - (c) section 103, this section and section 105 (general provisions).
- (5) Schedule 1 (reducing carbon emissions and home-heating costs: minor and consequential amendments) comes into force as follows –
- (a) paragraphs 1 to 5, 7, 8(1) and (5)(a), 11 and 13 come into force at the end of the period of two months beginning with the day on which this Act is passed; 35
 - (b) paragraph 8 (except sub-paragraphs (1) and (5)(a) of that paragraph) and paragraph 12 come into force on 1 January 2013;
 - (c) paragraphs 6, 9 and 10 come into force on 6 April 2014. 40
- (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.

105 Short title

This Act may be cited as the Energy Act 2011.

SCHEDULES

SCHEDULE 1

Section 68

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

<i>Gas Act 1986</i>		5
1	The Gas Act 1986 is amended in accordance with paragraphs 2 to 4.	
2	In section 28 (orders for securing compliance with certain requirements), in the definition of “relevant requirement” in subsection (8), after “this Act” insert “, section 103B of the Utilities Act 2000 (requirement to provide information relating to carbon emissions reduction targets etc)”.	10
3	In section 33BC(4) after “Secretary of State and” insert “(subject to any directions given under subsection (9B))”.	
4	In section 33DA(1)(a) (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”.	15
<i>Electricity Act 1989</i>		
5	The Electricity Act 1989 is amended in accordance with paragraphs 6 to 10.	
6	In section 6(9) (definition of “electricity distributor”, “electricity generator” and “electricity supplier”) omit the definition of “electricity generator”.	20
7	In section 25 (orders for securing compliance with certain requirements), in the definition of “relevant requirement” in subsection (8), after “below” insert “, section 103B of the Utilities Act 2000 (requirement to provide information relating to carbon emissions reduction targets etc)”.	
8	(1) Section 41A (promotion of reductions in carbon emissions: electricity generators, electricity distributors and electricity suppliers) is amended as follows.	25
	(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);	30
	(b) in the words after paragraph (b) omit “generator,”.	
	(4) In subsection (3) omit “electricity generators,”.	
	(5) In subsection (4) –	

- (a) after “Secretary of State and” insert “(subject to any directions given under subsection (9B))”;
- (b) omit paragraph (a) (duty to carry out functions under the section in a way that does not inhibit competition between electricity generators). 5
- (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,”. 10
- (8) In subsection (7)(d) omit “electricity generator,”.
- (9) In subsection (8)(d) omit “generators,”.
- (10) In subsection (11) omit “electricity generators,”.
- 9 (1) Section 42AA (publication of statistical information about standards of performance) is amended as follows. 15
- (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”.
- 20
- (3) In paragraph (b) of subsection (1) omit “generators,”.
- (4) In subsection (2) omit “electricity generators,”.
- 10 In section 64(1) (interpretation etc of Part 1) in the definition of “electricity distributor”, “electricity generator” and “electricity supplier” omit “, “electricity generator””.
- 25

Utilities Act 2000

- 11 The Utilities Act 2000 is amended in accordance with paragraphs 12 and 13.
- 12 In section 103 of the Utilities Act 2000 (overall carbon emissions reduction targets) –
- (a) in subsection (1)(b) omit “generators,”; 30
- (b) in subsection (2)(b) omit “electricity generators,”;
- (c) in subsection (4) omit “electricity generators,”.
- 13 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 – 35
- “(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 85

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.
- 2 In section 9 (provisions for securing that a pipeline is so constructed as to reduce necessity for construction of others) – 5
- (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 78 of the Energy Act 2011 (acquisition of rights to use upstream petroleum infrastructure), and 10
- (b) if applicable, an application under subsection (3) of that section.”;
- (b) after subsection (8) insert – 15
- “(9) For the purposes of an application made with respect to a proposed pipe-line by virtue of subsection (8) –
- (a) sections 78 and 79 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; 20
- (ii) references to the owner of a pipe-line were reference to the proposed owner of the proposed pipeline; 25
- (b) section 80 of the Energy Act 2011 shall be disregarded.”
- 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) – 30
- (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 78 of the Energy Act 2011 (acquisition of rights to use upstream petroleum infrastructure), and 35
- (b) if applicable, an application under subsection (3) of that section.”;
- (b) after subsection (8) insert – 40
- “(9) For the purposes of an application made with respect to a proposed pipe-line by virtue of subsection (8) –
- (a) sections 78 and 79 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 45

	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;	5
	(b) section 80 of the Energy Act 2011 shall be disregarded.”	
4	In section 10A(2) for “, 10(4) or 10E(9)” substitute “or 10(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.	10
6	In section 65(2) (meaning of “pipeline”) omit paragraph (g) and the “and” immediately before that paragraph.	
7	In section 66(1) (general interpretation provisions) –	
	(a) in paragraph (c) of the definition of “owner” for the words from “sections 10C” to “section 10E(2)” substitute “section 10C”;	15
	(b) for the definition of “upstream petroleum pipe-line” substitute – ““upstream petroleum pipe-line” has the meaning given by section 86(1) of the Energy Act 2011”.	
	<i>Gas Act 1995</i>	20
8	The Gas Act 1995 is amended in accordance with paragraphs 9 and 10.	
9	Section 12 (acquisition of rights to use gas processing facilities) is repealed.	
10	In section 18 (short title, commencement and extent) –	
	(a) in subsection (2)(b) omit “, 12”;	
	(b) omit subsection (4).	25
	<i>Petroleum Act 1998</i>	
11	The Petroleum Act 1998 is amended in accordance with paragraphs 12 to 18.	
12	In section 15 (authorisations for construction and use of controlled pipelines) in subsection (6) after “or 17G(6)” insert “of this Act or section 85(4) and (5) of the Energy Act 2011”.	30
13	In section 16 (compulsory modifications of controlled pipelines) before subsection (1) insert –	
	“(A1) This section applies to controlled pipelines, other than pipelines that are relevant upstream petroleum pipelines for the purposes of section 78(1) of the Energy Act 2011.”	35
14	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	40

- 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).”
- 15 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”. 5
- 16 In section 17G (section 17F: supplemental) in subsection (1) for “controlled waters” substitute “the territorial sea adjacent to Northern Ireland”. 5
- 17 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 78(10) of the Energy Act 2011”. 10
- 18 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 78(10) of the Energy Act 2011”. 15

Energy Act 2008

- 19 The Energy Act 2008 is amended in accordance with paragraphs 20 and 21.
- 20 Sections 80 to 82 (third party access to oil processing facilities) are repealed.
- 21 In section 112 (extent) omit paragraph (c) of subsection (2).

SCHEDULE 3

Section 102

20

REPEALS AND REVOCATIONS CONSEQUENTIAL ON SECTION 102

Sustainable Energy Act 2003

- 1 The Sustainable Energy Act 2003 is amended as follows.
- 2 In section 1 (annual reports on the progress towards sustainable energy aims) – 25
- (a) subsection (1)(e) and the “and” immediately preceding it cease to have effect, and
- (b) subsection (1AA) ceases to have effect.
- 3 In section 4 (energy efficiency of residential accommodation: energy conservation authorities) subsections (5)(b), (12)(b) and (13)(b) cease to have effect. 30

National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672)

- 4 In Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (enactments conferring functions transferred by Article 2) the entry relating to the Home Energy Conservation Act 1995 ceases to have effect. 35

Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (S.I. 2005/157)

- 5 Article 4 of the Local Authorities' Plans and Strategies (Disapplication) (England) Order 2005 (disapplication of duty to submit home energy conservation reports) ceases to have effect. 5

Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 (S.I. 2009/486)

- 6 The Local Government (Structural Changes) (Further Transitional Arrangements and Staffing) Regulations 2009 are amended as follows.
- 7 Regulation 3(4) (treatment of home energy conservation reports) ceases to have effect. 10
- 8 In regulation 4 (preparation of reports and plans: end of exemption) –
- (a) paragraph (1)(a) ceases to have effect;
 - (b) in paragraph (2), the words “a home energy conservation report or” and the words “the report or” cease to have effect. 15

Energy Bill [HL]

A

B I L L

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; 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 decommissioning of nuclear sites; about the powers of the Coal Authority; for the repeal of measures relating to home energy efficiency; and for connected purposes.

Lord Marland

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HL Bill 33

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