These notes refer to the Energy Bill [HL]
as introduced in the House of Lords on 8th December 2010 [HL Bill 33]

ENERGY BILL [HL]

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Energy Bill [HL] as introduced in the House of Lords on 8th December 2010. They have been prepared by the Department of Energy and Climate Change (DECC) in order to assist the reader of the Bill and to help inform debate. They do not form part of the Bill and have not been endorsed by Parliament.

2. These notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a clause or part of a clause does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND

3. The Bill implements elements of: *The Coalition's Programme for Government*[1] and also the first *Annual Energy Statement*[2] published on 27th July, which set out the Government plan to support the UK's transition to a secure, safe, low-carbon, affordable energy system, and mobilise commitment to ambitious action on climate change internationally.

4. The Bill has three principal objectives: tackling barriers to investment in energy efficiency; enhancing energy security; and enabling investment in low carbon energy supplies.

5. The majority of the Bill is made up of provisions to enable the financing and facilitation of installed energy efficiency measures in homes and businesses – the "Green Deal" – and to make improvements that will enable and secure low carbon energy supplies and fair competition in the energy markets.

OVERVIEW OF THE STRUCTURE OF THE BILL

6. The Bill is in five parts:

Part 1: Energy efficiency. Improving energy efficiency by tackling barriers to investment in energy efficiency through the Green Deal and measures to maximise its uptake; introducing a

[1] http://www.cabinetoffice.gov.uk/media/409088/pfg_coalition.pdfnsert link
[2] http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/aes/aes.aspx

new Energy Company Obligation from 2012 to underpin the Green Deal; making energy performance data from Energy Performance Certificates more widely available; extending powers to direct the roll out of smart meters; and requiring cheapest tariff information on energy bills.

Part 2: Security of energy supplies. Enhancing energy security through better monitoring of future electricity security; strengthening market incentive mechanisms for ensuring sufficient gas is available during a Gas Supply Emergency; improving third party access to UK oil and gas infrastructure; putting in place a Special Administration Regime for gas and electricity suppliers; and maximising the UK's ability to exploit the UK Continental Shelf.

Part 3: Low Carbon Generation. Enabling implementation of the enduring offshore electricity transmission regime beyond 2010 and giving investors in new nuclear increased certainty over their obligations.

Part 4: Coal Authority. Extending the vires of the Coal Authority in relation to offering and charging for services relating to non-coal mining activities.

Part 5: Miscellaneous and General. Includes the repeal of the Home Energy Conservation Act (HECA) 1995; extent; commencement and short title.

TERRITORIAL EXTENT AND APPLICATION

7. This Bill extends to England and Wales, Scotland and Northern Ireland, as described below.

8. All provisions in the Bill apply to Wales. All matters are reserved in respect of Wales.

9. Only the provisions related to the continental shelf and nuclear funded decommissioning programmes extend to Northern Ireland. Both these matters are reserved in respect of Northern Ireland.

10. The Bill extends to Scotland, except where the Bill amends legislation which does not itself extend to Scotland (see for example, clause 99 containing provisions on decommissioning nuclear sites).

11. Parts 2 and 3 relate to reserved matters. In Part 1, aspects of the Green Deal (Chapter 1), Private Rented Sector (Chapter 2) and Energy Company Obligation (Chapter 4) may relate to devolved matters, as may clause 71 in Chapter 5 (access to register of energy performance certificates: Scotland) and the provisions about the Coal Authority's functions in Part 4. The repeal of the Home Energy Conservation Act (Part 5) is devolved to Scotland. A Legislative Consent Motion will therefore be required for the devolved matters.

PART 1: ENERGY EFFICIENCY

CHAPTER 1: GREEN DEAL

SUMMARY AND BACKGROUND

12. The Green Deal aims to tackle the current lack of investment in energy saving measures in homes and non-domestic buildings, which has resulted in many properties with poor energy efficiency ratings. The Green Deal framework will enable the financing of fixed improvements to the energy efficiency of domestic and non-domestic properties.

13. The Green Deal financing framework enables energy saving measures to be paid for in instalments via the energy bills of the customer originally requesting the measures and subsequent bill-payers for the property. The core principle is that the cost of the energy saving measures should not exceed the estimated cost savings on an average bill for the duration of the Green Deal Finance arrangement. This financial framework will be backed up by an accreditation scheme of installers, assessors and approved measures to reinforce consumer confidence.

14. The domestic Green Deal model will be supplemented by a new Energy Company Obligation from the end of 2012, which will draw on the existing energy company obligation but also reflect recent developments. The new obligation will underpin the Green Deal and focus particularly on low income vulnerable households and those types of domestic property (such as those with a cavity wall) which cannot achieve financial savings without a measure of additional support on top of Green Deal finance.

COMMENTARY ON CLAUSES

Introductory

Clause 1: Green Deal plans

15. This clause sets out what constitutes an "energy plan" and a "green deal plan". An energy plan is an arrangement made by the occupier or owner of a property for making energy efficiency improvements to that property and a green deal plan is an energy plan where the energy efficiency improvements are to be paid for wholly or partly by instalments and the requirements of subsection (4) are met at the time the plan is made.

16. Subsection (4) sets out the requirements that a green deal plan must meet. These include that: the property is eligible; the energy efficiency improvements are "qualifying energy improvements"; the conditions relating to assessment of the property have been met; the conditions relating to the terms of the plan are met; and a relevant energy supplier supplies the property.

17. Energy efficiency improvements will only be "qualifying energy improvements" if they have been specified as such in an order made by the Secretary of State.

18. Subsection (6) explains that payments under a green deal plan are to be made by the person who is for the time being liable to pay the energy bills for the property. This person is referred to as the "bill payer" (clause 2(3)). Subsection (6) also says that payments should be made to the relevant energy supplier through the energy bills for the property. Subsection (7) confirms that the requirement to make payments applies to the bill payer irrespective of whether he was the person who entered into the green deal plan. Subsection (5) confirms that the arrangements in subsections (6) will only apply if the improvements have been installed in accordance with clause 7, the green deal plan has been confirmed in accordance with clause 8 and the requirements imposed by virtue of clauses 9 and 10 are met.

19. Subsection (8) says that subsection (6) is subject to the provision made in clause 30 (power of the Secretary of State to deal with special circumstances) and any suspension or cancellation of liability by virtue of provision made in regulations under clauses 3(3)(h) or (i), 6(4) or 14 (sanctions and redress) or clause 31 (appeals).

20. Under subsection (9), a property will be an eligible property unless it falls within a description specified in an order made by the Secretary of State.

Clause 2 Green deal plans: supplementary

21. Subsection (2) defines "improver" and "green deal provider". Subsection (3) defines "bill payer" by reference to clause 1(6)(a).

22. Subsections (4) to (6) define the range of measures that fall within the meaning of "energy efficiency improvements" and may, therefore, be eligible as "qualifying energy improvements". Subsection (4) includes measures for improving efficiency in the use of electricity or gas conveyed through pipes or any other source of energy specified in an order made by the Secretary of State, together with any measures falling within subsections (5) and (6).

23. Subsection (5) defines other measures for increasing the amount of electricity generated or heat produced by microgeneration or by using low-emissions sources or technologies and also measures for reducing the consumption of the types of energy mentioned in subsection (4). Subsection (6) provides for the inclusion of measures in green deal plans which are installed for the purpose of supplying to the property: electricity generated to produce heat or a cooling effect; heat produced in association with electricity or steam produced from heat; or gas or liquid subjected to a cooling effect produced in association with electricity.

24. The measures referred to in subsections (5) and (6) will only be eligible if they are specified as such in an order made by the Secretary of State.

25. Subsection (9) confirms that the meaning of "energy", "energy bill", "occupier", "owner" and 'relevant energy supplier' will be given in regulations made by Secretary of State.

26. Subsection (10) enables the Secretary of State, when making regulations under subsection (9), to make provision in those regulations in respect of circumstances where someone who is not a bill payer for the purposes of Chapter 1 may be treated as such.

Clause 3: Framework regulations

27. This clause gives the Secretary of State powers to establish, in regulations, a scheme for authorising persons to act as green deal assessors, green deal providers and green deal installers and regulating the conduct of these "green deal participants".

28. Subsection (3) contains a non-exhaustive list of the provision that may be made by the scheme. In particular, this includes provision for: requiring the payment of a fee in connection with authorisation under the scheme; the issuing of a code of practice; requiring green deal participants to enter into a multi party agreement; requiring the Secretary of State to approve that agreement; requiring green deal participants to comply with the code of practice; securing compliance with the scheme, code or agreement; and provision as to the consequences of non-compliance. It also includes provision for the establishment and maintenance of a register of green deal participants and those whose authorisation under the scheme has been withdrawn, and for requiring green deal participants to provide information.

29. Subsection (4) details what the code of practice may provide for, for example: the qualification and training of green deal participants; the handling of queries or complaints; insurance; charging and marketing.

30. Subsection (5) allows the code to include provision for regulating a body specified or authorised for the purposes of subsection (1)(a) and subsection (6) allows the scheme and code to make different provision for different circumstances or cases.

31. Subsection (8) provides examples of the provision which the Secretary of State may make for securing compliance with the scheme code or agreement mentioned in subsection (3). For example, the Secretary of State may require a green deal provider to cancel or suspend a bill payer's liability to make payments under a green deal plan; require a green deal participant to rectify a qualifying energy improvement or its installation; or require a green deal participant to pay compensation or a financial penalty. The Secretary of State may also make provision enabling the Secretary of State to withdraw a green deal participant's authorisation.

32. Subsection (9) states that a qualifying assessment is an energy efficiency assessment which meets the requirements of the framework regulations and deals with such other matters as specified in those regulations.

Green Deal plan

Clause 4 : Assessment of the property etc

33. This clause sets out the conditions that must be met in order for a green deal plan to be taken out at a property. The conditions include those listed in subsections (2) to (9) and such other conditions as the Secretary of State may specify in the framework regulations.

34. Subsection (2) makes it a condition that a qualifying assessment has been carried out by a person authorised to act as a green deal assessor. Subsection (3) makes it a condition that a green deal assessor has recommended the energy efficiency improvements. Subsection (4) makes it a condition that the green deal provider has given an estimate of the energy bill savings that are likely to be made if the improvements are carried out. Subsection (5) requires the green deal provider to give an estimate of the period over which the improvements are likely to generate the savings mentioned in subsection (4).

35. Subsection (6) makes it a condition that the green deal provider is authorised to act as a green deal provider. Subsection (7) requires the green deal provider to have offered to carry out the improvements on the basis that the cost will be paid for in instalments.

36. Subsections (8) and (9) set conditions as to the relationship between the estimated total amount of the proposed instalments to be paid and the estimated energy bill savings that the improvements will generate, as well as the relationship between the period for which instalments will be paid and the estimated time period over which the energy bill savings will be delivered. The nature of these relationships will be specified in the framework regulations.

Clause 5: Terms of plan etc

37. This clause sets out the requirements relating to the terms of green deal plans. Subsections (2) to (4) impose three conditions in respect of the terms of green deal plans. The first condition is that the green deal plan must include the terms listed in subsection (2). For example, the plan must include a condition in which the improver agrees to the amount of the instalment payments and the frequency with which those payments must be made. The plan must also include a term in which the improver confirms that any necessary permissions or consents have been obtained in respect of the improvements.

38. There must also be a term which states that the green deal provider may not take a charge over a property by way of security for the payments and a term which makes it clear that the green deal plan does not prevent the bill payer from changing the intervals at which energy bills are paid.

39. The second condition is that green deal plans must not include any of the terms mentioned in subsection (3). For example, the plan must not include a term making a bill payer liable to make payments under a green deal plan otherwise than in respect of the period for which a person is a bill payer in respect of that property. Also, the plan must not include a

term requiring the bill payer to repay early either the whole or part of the amount outstanding under the plan, except to the extent allowed for by the framework regulations or regulations under clause 30.

40. The third condition is contained in subsection (4). The effect of this condition is to provide a "cooling off period" of 14 days within which the consents and permissions envisaged by subsection (2) can be withdrawn.

41. Subsection (1)(b) enables the Secretary of State to specify other conditions in the framework regulations. Subsection (5) provides examples of the provision which may be made under subsection (1)(b) and includes a term which enables bill payers to make early repayments of outstanding amounts under the green deal plan; a term which provides a guarantee in respect of the improvements; and a term which addresses how problems relating to the installed measures are to be resolved.

42. Subsection (5)(d) says that the framework regulations may make provision for the agreements mentioned in subsection (2)(a) to be in a specified form.

Clause 6: Consents and redress etc

43. Subsections (1) and (2) state that the framework regulations may make provision for dealing with situations where, at the time the green deal plan is entered into, the energy bill payer and the improver are different persons, for example where a property owner is the improver and the occupier is the bill payer. In particular, the regulations may provide for it to be a term of the plan that the bill payer has consented to the green deal plan. The regulations may also make provision for circumstances where the bill payer at the time the green deal plan was entered into and the bill payer at any other time (known as the "subsequent bill payer") are different. Subsection (1) is subject to clause 1(6).

44. Subsection (4) enables the Secretary of State to provide for redress in cases where a permission or consent mentioned in clause 5(2)(b) was not obtained or was obtained improperly. A non-exhaustive list of the types of redress which the Secretary of State may make provision for is set out in subsection (5).

Clause 7: Installation of improvements

45. This clause sets out the conditions that need to be met for the installation of improvements. This includes requirements that: the person carrying out the improvements must be authorised as a green deal installer; the type of improvement being installed must meet the standard specified in the code of practice and, if a list is annexed to the code by the Secretary of State, the improvement must be drawn from that list; and the carrying out of the installation of the improvements must meet the standard specified in the code of practice.

Clause 8: Confirmation of plan

46. This clause sets out the conditions that need to be met in order for a green deal plan to be confirmed in accordance with clause 1(5)(b). Subsections (2) and (3) contain the first condition, which requires an energy supplier to notify the bill payer, within a time period set by the framework regulations, that payments for energy efficiency improvements are to be included in the energy bills for the property from a specified date, as well as the amount of those payments and time period to which those repayments relate.

47. Subsection (4) contains the second condition, which is that as soon as is practicable after the improvements have been installed, the green deal provider must ensure either that certain information about the green deal plan is included in a new type of document to be used by green deal providers specifically for this purpose or that such information is added to an existing document. If an existing document is used, the Secretary of State will specify the type of document in the framework regulations.

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

48. This clause makes further provision, relating to England and Wales, in respect of the second condition in clause 8.

49. The provisions of this clause apply if the Secretary of State specifies a document of a description falling within the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 ("the 2007 Regulations") for the purposes of subsection (4)(b) or (c) of clause 8 . If such a document is specified, subsection (2) enables the framework regulations to make provision for the 2007 Regulations to have effect in connection with that document with modifications.

50. Subsection (3) allows modifications to be made to the 2007 Regulations that may include: requiring the document to contain additional information in connection with the plan; making provision about the period for which the document must be entered onto the register and maintained under Part 6 of the 2007 Regulations; and imposing a requirement to pay a fee.

Clause 10: Confirmation of plan: supplementary provision for Scotland

51. This clause makes provision in relation to Scotland that is equivalent to that made by clause 9 in respect of England and Wales. The provisions of this clause apply if the Secretary of State specifies a document of a description falling within the Energy Performance of Buildings (Scotland) Regulations 2008 ("the 2008 Regulations") for the purposes of subsection (4)(b) or (c) of clause 8. Subsection (2) enables Scottish Ministers to make regulations providing for the 2008 Regulations to have effect in connection with that document with modifications.

52. Subsection (3) allows modifications to be made to the 2008 Regulations that may include: requiring the document to contain additional information in connection with the plan; making provision about the period for which the document must be entered onto the register

maintained under regulation 10 of the 2008 Regulations; and imposing a requirement to pay a fee.

Clause 11: Updating information produced under section 8

53. Subsection (1) allows the framework regulations to make provision as to the circumstances in which a document produced under clause 8(4)(a) is required to be amended.

54. Subsection (2) states the provisions of subsection (3) apply where the framework regulations specify a document of a description required to be produced under the 2007 Regulations for the purposes of clause 8(4)(b) or (c). Subsection (3) enables the framework regulations to make provision for the 2007 Regulations to have effect with the further modifications specified in the framework regulations. Subsection (4) states that the modifications referred to in subsection (3) can include requiring the additional information relating to the green deal plan to be amended and imposing the requirement to pay a fee.

55. Subsections (5) to (7) make provision in relation to Scotland that is equivalent to that made by subsections (2) to (4) in respect of England and Wales. Subsection (6) applies where the framework regulations specify a document of a description required to be produced under the 2008 Regulations for the purposes of clause 8(4)(b) or (c). Subsection (6) enables the Scottish Ministers to make provision in regulations for the 2008 Regulations to have effect with the further modifications specified in those regulations. Subsection (7) states that the modifications referred to in subsection (6) can include requiring the additional information relating to the green deal plan to be amended and imposing the requirement to pay a fee.

Disclosure of green deal plan etc

Clause 12 : Disclosure of Green Deal plan etc in connection with sale or letting out

56. Clause 12 seeks to ensure that those who intend to buy a green deal property or let a green deal property under a tenancy or licence agreement are made aware of important information about the green deal plan.

57. Subsections (1) and (2) place a duty on those selling and letting out a green deal property to disclose the document referred to in clause 8(4) to prospective buyers, tenants and licensees. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property. Subsection (2) requires that person to obtain the relevant document and then provide the document free of charge to the prospective buyer, tenant or licensee at the specified time.

58. Subsection (3) enables an obligation under subsection (2) to be discharged by an agent.

59. Subsection (4) defines a prospective buyer, tenant or licensee as someone who: requests any information about the property from the seller, prospective landlord or licensor or their agent for the purpose of deciding whether to buy or let the property; makes a request to view the property for that purpose; or makes an oral or written offer to buy or let the property.

60. Subsection (5) defines an "agent" as someone acting on behalf of a seller, prospective landlord or licensor and a "green deal property" as a property with a green deal plan for which green deal payments are still to be made. It also defines the term "specified" in relation to time meaning as specified in the regulations.

61. Subsection (6) enables the Secretary of State to specify the circumstances in which the duty in subsection (2) does not apply.

Clause 13 : Acknowledgement of Green Deal plan on sale or letting out

62. Subsections (1) and (2) place a duty on the seller, prospective landlord or prospective licensor of a green deal property to secure that the relevant written contract or tenancy agreement includes an acknowledgement by the prospective buyer, tenant or licensee that the green deal plan is binding on the bill payer at the property. The duty applies to sellers of green deal properties and those letting out such properties under a tenancy or licence agreement where the prospective tenant or licensee will be liable for paying the energy bill at the property.

63. Subsection (4) requires that acknowledgment to be in a form specified by the Secretary of State in regulations in respect of properties situated in England or Wales. Subsection (7) provides an equivalent power for the Scottish Ministers in respect of properties in Scotland.

64. Subsection (7) states that the Secretary of State may, in regulations, specify cases or circumstances under which an acknowledgement is not required. Subsection (8) provides an equivalent power for the Scottish Ministers.

Clause 14 : Sanctions for non-compliance with section 12 or 13

65. This clause allows the Secretary of State to make regulations to ensure that sellers, prospective landlords and prospective licensees meet their disclosure and acknowledgement obligations. Subsection (2) contains a non-exhaustive list of the types of provision which the Secretary of State may make, including provision allowing for the imposition of civil penalties and provision to require a green deal provider to suspend or cancel the bill payer's liability to make payments under a green deal plan.

Modifying energy licences etc

Clause 15 : Power to modify energy licences in connection with green deal payments

66. Subsection (1) provides the Secretary of State with a power to modify gas transporter, shipper and supply licences and electricity distribution and supply licences, including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents.

67. Subsection (2) limits the power in subsection (1) so that it may only be exercised for the purposes of: preventing the holder of the licence from permanently disconnecting the supply of gas or electricity to a green deal property (insofar as the power relates to licences under section 7 of the Gas Act 1986 and section 6(1)(c) of the Electricity Act 1989); and requiring or enabling licence holders to take, or not to take, specified action in connection with green deal payments.

68. Subsection (3) provides that the provision which may be made in connection with green deal payments may include: allowing a specified licence holder to opt-in or opt-out of the following requirements; requiring a licence holder to collect green deal payments through energy bills and pass them to a green deal provider; making provision for cases where a licence holder is required to make payment to a green deal provider but green deal payments which are due have not been made by the bill payer; provision in connection with the cancellation and suspension of green deal payments; and enabling payments to be made by or to a licence holder with respect to their obligation in connection with green deal payments.

69. Subsection (4) defines payments as green deal payments if they are made under a green deal plan. It also defines a green deal property as a property where there is a green deal plan and payments are still to be made under that plan. References to the green deal provider in this clause include references to someone acting on the green deal provider's behalf.

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

70. Subsection (1) provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). Subsection (2) limits the power in subsection (1) so that it may only be used for the purpose of making provision for: the steps that must be taken by the holder of the licence following a bill payer's failure to make green deal payments; the circumstances in which a licence holder may disconnect the supply to a green deal property; and enabling, in certain circumstance, a licence holder to use a security deposit paid by the bill payer to pay green deal payments to the green deal provider.

71. Subsection (3) defines "green deal payments" and a "green deal property" by reference to clause 15(4).

Clause 17 : Power to modify energy supply licences to require provision of information

72. Subsection (1) provides the Secretary of State with a power to modify gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). Subsection (2) limits the power in subsection (1) so that it can only be used for the purpose of requiring a licence holder, at specified times, to provide bill payers with specified information in connection with their green deal plans. Subsection (3) stipulates that the power may require information to be provided in a specified form.

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

73. Subsection (1) provides the Secretary of State with powers to modify conditions incorporated in gas and electricity supply licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). Subsections (2) and (3) allow the modifications to make provision corresponding to that of the disapplied consumer protection legislation if it is made for the same purpose for which the disapplied consumer protection legislation was made. Subsection (4) stipulates that references to the "disapplied consumer protection legislation" are to the provisions of the Consumer Credit Act 1974 which would have applied if the amendments made by clause 24 had not been made.

Clause 19 : Powers under section 15 to 18: consultation

74. This clause stipulates that the Secretary of State, before making modifications under clauses 15 to 18 must consult with the holder of any licence being modified, the Gas and Electricity Markets Authority (GEMA), and such other persons as the Secretary of State considers appropriate. Subsection (2) provides that this requirement may be satisfied by consultation before, as well as after, the passing of this Bill.

Clause 20 : Powers under section 15 to 18 : supplementary

75. This clause makes provision about the exercise of the powers to make licence modifications contained in clauses 15 to 18. Subsection (2) allows the Secretary of State to exercise the power to introduce a modification either generally, in relation solely to specified cases or subject to exceptions, and allows the powers to make incidental, consequential or transitional modifications. The Secretary of State can also exercise this power differently in different cases or circumstances. Subsection (3) provides that the provisions included in licences by virtue of these powers need not relate to the activities authorised by the licence and may make different provision for different cases. Subsection (4) stipulates that the Secretary of State must publish details of modifications made under clauses 15 to 18 as soon as is reasonably practicable after the modifications are made.

76. Subsection (5) says that a modification of a standard condition of a licence does not prevent any other part of that condition continuing to be regarded as a standard condition.

Subsection (6) states that where a standard condition is modified, the condition, as modified, must be incorporated in licences granted after the time of the modification.

Gas and electricity codes

Clause 21 : Recovering green deal payments: gas suppliers

77. This clause amends Schedule 2B to the Gas Act 1986 (the gas code) to give gas suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of gas and for a green deal plan, and to allow sums owed under a green deal plan to be collected from gas prepayment meters.

78. Subsections (2) to (5) contain the substitutions to be made in Schedule 2B to the Gas Act 1986.

Clause 22 : Recovering of green deal payments: electricity suppliers

79. This clause amends Schedules 6 and 7 to the Electricity Act 1989 (the electricity code) to give electricity suppliers the right to take action in the event that a bill payer defaults on relevant payments, where relevant payments include payments for the supply of electricity and for a registered green deal plan, and to allow sums owed under a green deal plan to be collected from electricity prepayment meters.

80. Subsections (2) to (6) contain the insertions and substitutions to be made in Schedules 6 and 7 to the Electricity Act 1989.

Modifying consumer credit legislation

Clause 23 : Exemption from Consumer Credit Act 1974 in relation to credit to business debtors

81. This clause amends section 16B of the Consumer Credit Act 1974 to provide that the Act does not regulate consumer credit agreements in the form of green deal plans where the agreement is exclusively for business purposes and the credit does not exceed a sum of £25,000.

82. Subsections (2) to (4) contain the insertions to the Act.

Clause 24 : Energy suppliers not to be treated as carrying on ancillary credit business

83. This clause amends the Consumer Credit Act 1974 so as to exempt energy suppliers from the need to obtain an Office of Fair Trading licence in carrying out the functions required of them under the Green Deal.

84. Subsection (4) exempts energy suppliers from the need for a licence where they are carrying out functions comprising or relating to debt-adjusting, debt-counselling, debt-

collecting or debt administration, in relation to payments due under a green deal plan associated with the supplier.

85. Subsection (5) specifies that a green deal plan is associated with a supplier where a supplier is collecting payments under that plan.

86. Subsection (6) defines the terms "green deal plan" and "relevant energy supplier" by reference to clauses 1 and 2 of this Bill.

Clause 25 : Duties to give debtors information and statements.

87. This clause amends sections 77, 77A and 77B of the Consumer Credit Act 1974 so that, in respect of green deal plans, the obligations placed on creditors to provide debtors with statements periodically and on request can be met by a third party acting on behalf of the creditor.

88. Subsections (2) to (4) contain the insertions to be made.

Clause 26 : Exemption from requirement to give notice of sums in arrears

89. This clause amends section 86B of the Consumer Credit Act 1974 so that, in the context of green deal plans, creditors are exempt from the requirement to give debtors notice of sums in arrears. This clause provides for subsection (12) of section 86B of the Consumer Credit Act 1974 to be replaced by new subsections (12) to (12B).

Clause 27: Power to amend Consumer Credit Act 1974

90. This clause enables the Secretary of State, following consultation with the Office of Fair Trading and such other persons as the Secretary of State considers appropriate, to amend the Consumer Credit Act 1974 in consequence of the provision made by or under Chapter 1.

Delegation of functions

Clause 28 : Delegation and conferring of functions

91. Subsection (1) provides for the Secretary of State to delegate, by order, the exercise of certain functions to a public body specified in an order. If the function of issuing the code of practice is transferred to a public body, subsection (2) provides that the Secretary of State must approve the code before it is issued. Subsections (3) and (4) enable the Secretary of State to make provision by order for functions in connection with administration of any provision in licences under sections 7 or 7A of the Gas Act 1986 or section 6(1)(c) or (d) to be conferred on the Secretary of State or a public body.

92. Subsection (5) provides that the order may specify different functions to be exercisable by different bodies and that the same functions may be exercised by different public bodies in relation to different areas. Subsection (6) enables the Secretary of State to make payments to any public body specified in an order made under this clause.

Clause 29 : Duty to report

93. This clause provides the Secretary of State with an additional power where the function described is delegated to a public body. Where this is the case, the Secretary of State may make regulations which require the public body to collect information on specified matters and provide the Secretary of State with a report on those matters at a specified time.

General

Clause 30 : Power of Secretary of State to deal with special circumstances

94. Subsection (1) allows the Secretary of State to make regulations setting out: the circumstances in which a bill payer's liability to make green deal payments is suspended or cancelled; the circumstances in which the suspension of any liability ends; the consequences of any suspension or cancellation; and 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.

95. Subsection (2) states that the regulations may provide for: the procedure to be followed in order to secure a cancellation or suspension which may include the payment of an administration fee; how payments are to be paid which are due during and following a suspension period; and as to the calculation of the amount payable on early repayment.

96. Subsection (3) defines the "bill payer" to include the person who would be bill payer if the supply were not temporarily disconnected or the liability to make green deal payments was not suspended and "payments" as green deal payments if they are made under a green deal plan.

Clause 31 : Appeals

97. This clause requires the Secretary of State to provide a right of appeal against any sanction imposed or other action taken by the Secretary of State (or a specified public body) under clauses 3(3)(h) or (i) (non-compliance with conditions or requirements of the scheme, code or agreement), 6(4) (redress where permission or consent mentioned in clause 5(2)(b) not obtained or improperly obtained) and 14 (non-compliance with clauses 12 and 13).

98. The right of appeal which the Secretary of State must provide for is a right of appeal to a court or tribunal (subsection (2)). Subsections (3) and (4) set out the provision which the Secretary of State may make in respect of the right of appeal and, in particular, the court's or tribunal's powers in respect of an appeal application. Subsection (5) enables the Secretary of State to revoke or amend any subordinate legislation for the purpose of or in consequence of any provision falling within subsection (3)(a), (d), (f) or (g).

Clause 32 : Funding for energy efficiency advice

99. This clause enables the Secretary of State to incur expenditure in providing advice or information about green deal plans or energy efficiency generally to individuals and organisations or in making payments to persons providing such advice or information.

Clause 33 : Regulations and orders

100. This clause enables the Secretary of State, when making orders or regulations under Chapter 1, to make different provision for different cases or circumstances or for different purposes. It provides for orders and regulations to be made by statutory instrument following the negative procedure, except in the case of statutory instruments making the framework regulations, regulations under clauses 10, 11, 14, 30 and 31 or an order under clause 27. These require the affirmative procedure except for clause 10, 11(6) and 13(7) and (8) (where Scottish procedure applies).

101. Subsection (7) provides that the Secretary of State must consult Scottish Ministers in respect of any regulations or orders extending to Scotland, and that if the regulations or order contain anything within the legislative competence of the Scottish Parliament, Scottish Ministers' consent is required.

102. Subsection (8) provides that Welsh Ministers must be consulted on regulations or orders which apply to Wales.

Clause 34 : Crown application: Chapter 1

103. This clause provides that Chapter 1 binds the Crown.

CHAPTER 2: PRIVATE RENTED SECTOR (ENGLAND AND WALES)

SUMMARY AND BACKGROUND

104. This Chapter sets out powers to allow the Secretary of State to make regulations requiring private landlords to make relevant energy efficiency improvements to their domestic and commercial properties in England and Wales. These powers would only be used following a review and if the Secretary of State, having regard to the review, is satisfied regulations will improve the energy efficiency performance of the sector and not decrease the number of properties available for rent. The earliest date regulations could be made is April 2015.

105. Domestic landlords would be required to honour reasonable requests from tenants for energy efficiency improvements, where a specified financial support package is available. The Secretary of State could also require local authorities to insist that landlords improve the worst performing homes, again where a financial package is available.

106. In the non-domestic sector, this Chapter enables the Secretary of State to oblige landlords with the worst performing properties to undertake relevant energy efficiency improvements before the property is let out.

COMMENTARY ON CLAUSES

Introductory

Clause 35 : Meaning of "domestic PR property" and "non-domestic PR property": England and Wales

107. This clause provides the definition of "domestic private rented property" and "non-domestic private rented property" for the purpose of this Chapter.

Clause 36 : Review of energy efficiency in the private rented sector: England and Wales

108. This clause requires the Secretary of State to conduct a review of the energy efficiency of domestic private rented properties and non-domestic private rented properties in England and Wales or to arrange for someone else to carry out such a review. Subsection (4) provides that this review must not be commenced until at least one year after the coming into force of the framework regulations governing the green deal. Subsection (5) sets out matters which must be considered in the review and subsection (6) states that a report of the review must be published before 1st April 2014.

Domestic energy efficiency regulations

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

109. This clause gives the Secretary of State powers to make domestic energy efficiency regulations in respect of England and Wales after the report provided for in clause 36 (6) has been published if, having regard to the report, the Secretary of State considers that the regulations will improve the energy efficiency of the domestic private rented sector and will not decrease the number of properties available for rent.

110. Subsections (2) to (5) provide that domestic energy efficiency regulations would require local authorities to issue a notice to landlords renting out domestic private rented properties which fall below a specified level of energy efficiency. The notice would require the landlord to make relevant energy efficiency improvements identified in the notice. Subsection (4) allows regulations to provide for the steps local authorities must take to identify the properties in respect of which notices must be issued, and for local authorities to be relieved of the duty to issue a notice in specified circumstances.

111. Subsection (6) provides that 'relevant energy efficiency improvements' are those which are of a description specified in the regulations and can be (i) financed wholly by a green deal plan, (ii) provided free of charge under a scheme provided for under section 33BC

or 33BD Gas Act 1986 or sections 41A or 41B Electricity Act 1989 (a "supplier scheme"[3]), (iii) financed wholly by a combination of the green deal and subsidy under a supplier scheme, or (iv) financed under another specified financial arrangement. Subsection (6) also provides for "landlord" and "local authority" to be defined in the regulations.

112. Subsection (8) states the domestic energy efficiency regulations may not come into force until 1st April 2015 at the earliest.

Clause 38 : Further provision about domestic energy efficiency regulations: England and Wales

113. This clause sets out further provisions that may be included in the domestic energy efficiency regulations. In particular regulations can make provision: about the form, content and service of the notice and any response from the landlord; the circumstances in which a local authority can or must withdraw a notice; the period in which the improvements must be made; circumstances in which a landlord is exempt from any requirement imposed and the evidence relating to any requirement imposed.

114. Subsection (2) provides, in particular, that regulations can provide for exemptions for landlords which relate to necessary permissions or consents or the likely negative impact on the value of a property of complying with the notice. Accordingly, the Secretary of State could provide, for example, that a landlord is not required to make improvements if he cannot obtain consent which is required to be given by his freeholder, or if the property is likely to be worth less as a result of the improvements being installed.

115. Subsection (3) sets out examples of the kind of provision that may be made in regulations as to evidence. For example, provision may be made as to the evidence required to show that a landlord has complied with a notice, or is exempt from having to comply with a notice.

Clause 39 : Sanctions for the purposes of domestic energy efficiency regulations: England and Wales

116. This clause enables the Secretary of State to make provision for the purpose of securing compliance by landlords with the requirements imposed on them. Subsections (2) and (3) provide that this can include sanctions for non-compliance and sanctions for provision of false information including the imposition by the local authority of a civil penalty not exceeding £5000.

[3] The schemes are currently the Carbon Emissions Reduction Target, provided for in the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (SI 2008/188) and the Community Energy Saving Programme, provided for in the Electricity and Gas (Community Energy Saving Programme) Order 2009 (SI 2009/1905).
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117. Subsection (4) requires regulations to provide for a right of appeal to a court or tribunal against the imposition of a penalty and subsections (5) to (8) make further provision regarding appeals.

Tenants' energy efficiency improvements regulations

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

118. This clause gives the Secretary of State powers to make tenants' energy efficiency improvements regulations in respect of England and Wales after the report provided for in clause 36 (6) has been published if, having regard to the report, the Secretary of State considers that the regulations will improve the energy efficiency of the domestic private rented sector and will not decrease the number of properties available for rent.

119. Subsections (2) to (4) provide that tenants' energy efficiency regulations are regulations made for the purpose of securing that a landlord of a domestic private rented property does not unreasonably refuse a request by the tenant of the property to consent to the making of relevant energy efficiency improvements.

120. Subsection (5) defines "relevant energy efficiency improvements" in the same way as in subsection (6) of clause 37, and enables the Secretary of State to define "landlord" and "tenant" in regulations. Subsection (6) states the tenants' energy efficiency regulations may not come into force until 1st April 2015 at the earliest.

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

121. This clause sets out at subsection (1) further provisions that may be included in the tenants' energy efficiency regulations. Regulations can deal with the form, content and service of the request by the tenant and the response from the landlord, and can set out exemptions from any requirement imposed and provision as to evidence relating to any requirement imposed.

122. Subsection (2) indicates that exemptions might relate to necessary permissions or consents, or to the likely negative impact on the value of a property of consenting to the request.

123. Subsection (3) sets out examples of the kind of provision that may be made in regulations as to evidence, including specifying the kind of evidence required to show that an exemption applies.

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

124. This clause enables the Secretary of State to make provision in the regulations for the purpose of securing that landlords comply with tenants' energy efficiency improvements regulations. This can include provision under subsections (2) and (3) for the tenant to make an application to a court or tribunal for a ruling that a landlord has not complied with a requirement imposed by the regulations.

125. Subsections (4) to (6) provide for a right of appeal against any decision made by a court or tribunal.

Non-domestic energy efficiency regulations

Clause 43 : Power to make non-domestic energy efficiency regulations: England and Wales

126. This clause gives the Secretary of State powers to make non-domestic energy efficiency regulations in respect of England and Wales after the report provided for in clause 36 (6) has been published if, having regarding to the report, the Secretary of State considers that the regulations will improve the energy efficiency of the non-domestic private rented sector and will not decrease the number of properties available for rent.

127. Subsections (2) to (4) provide that non-domestic energy efficiency regulations are regulations made for the purpose of securing that a landlord of a non-domestic private rented property which falls below a specified level of energy efficiency must not let that property until relevant energy efficiency improvements have been made to it. Subsection (5) provides that "relevant energy efficiency improvements" are those which are of a description specified in the regulations and which can be paid for (i) wholly under a green deal plan or (ii) under another financial arrangement specified in the regulations. Subsection (5) also provides for "landlord", "let the property" and "tenant" to be defined in the regulations.

Clause 44 : Further provision about non-domestic energy efficiency regulations: England and Wales

128. This clause sets out further provisions that may be included in the non-domestic energy efficiency regulations. In particular regulations may deal with the period in which improvements must be made, exemptions from any requirement imposed and the evidence relating to any requirement imposed.

129. Subsection (2) provides, in particular, that regulations can provide for exemptions for landlords which relate to necessary permissions or consents, or any likely negative impact on the value of the property of the improvements being made. Accordingly, the Secretary of State could provide that a landlord is not required to make improvements if he cannot obtain consent which is required to be given by his freeholder, or if the property is likely to be worth less as a result of the improvements being installed.

130. Subsection (3) sets out examples of the kind of provision that may be made in regulations as to evidence. For example, the regulations may specify the kind of evidence needed to show that a landlord is exempt from the requirement to make the improvements, or that the property is not in fact a non-domestic private rented property to which the regulations apply.

Clause 45 : Sanctions for the purposes of non-domestic energy efficiency regulations: England and Wales

131. This clause enables the Secretary of State to make provision for the purpose of securing that landlords comply with the requirements imposed on them under non-domestic energy efficiency regulations. Regulations can provide for (i) a local weights and measures authority to enforce any requirement imposed by or under the regulations, and (ii) sanctions for non-compliance and provision of false information, which can be a civil penalty.

132. Subsections (3) to (7) provide for a right of appeal to a court or tribunal against the imposition of a penalty.

Clause 46 : Regulations and orders: England and Wales

133. This clause enables the Secretary of State, when making orders or regulations under Chapter 2, to make different provision for different cases or circumstances or for different purposes. It provides for orders to be made by statutory instrument subject to the negative procedure. Regulations are to be made by statutory instrument subject to the affirmative procedure.

Clause 47: Crown application: Chapter 2

134. This clause provides that Chapter 2 binds the Crown.

CHAPTER 3: PRIVATE RENTED SECTOR: SCOTLAND

135. Clauses 48 to 60 in this Chapter makes provision for Scotland which is equivalent to that made in Chapter 2 for England and Wales.

136. The obligation to conduct a review in this Chapter falls on Scottish Ministers, and regulations and orders made under this Chapter are to be made by Scottish Ministers.

CHAPTER 4: REDUCING CARBON EMISSIONS AND HOME-HEATING COSTS

SUMMARY AND BACKGROUND

137. This Chapter contains new and amended powers to create a future Energy Company Obligation (ECO), which the Government intends will replace, in time, the existing energy company obligations – the Carbon Emissions Reduction Target (CERT) and the Community Energy Saving Programme (CESP) – when they end in 2012. Broadly, the policy intention is

to create a new obligation which draws on the existing energy company obligations but also reflects a number of new developments as described below.

138. By the time CERT and CESP end in December 2012, the Green Deal financing framework initiative provided by Chapter 1 of Part 1 of the Bill is expected to have been put in place. This will represent a significant change to the policy landscape and one of the key objectives of the ECO will be to underpin the market-led Green Deal, helping to ensure that, as far as possible, all households can access energy efficiency measures.

139. By the time the new obligation is up and running, the energy efficiency needs of the housing stock in Great Britain will also have changed, and hard-to-treat properties will form a much larger proportion of the pool of homes remaining to be insulated. For example, there will be far fewer lofts and wall cavities remaining to be insulated, and of those remaining, a much larger proportion will be technically less straightforward to treat. This is in addition to the approximately 7m homes in Great Britain that require some form of solid wall insulation. Green Deal finance alone is unlikely to meet the needs of installing more expensive improvements in hard to treat homes, and part subsidising the costs through the ECO would serve to reduce the size and term of the repayments by the householder and so allow more expensive improvement to take place.

140. The ECO is also intended to focus particularly on support for low-income households and the most vulnerable in society. Some households in this category may require more support than just Green Deal finance if they are to improve their energy efficiency and reduce their fuel bills. Some of the types of measures required for these properties, such as boiler repairs or new heating systems, reduce the cost of heating a home adequately, but do not lead to energy efficiency or carbon savings. It would be difficult to incentivise such measures through a carbon or energy efficiency-based target using the existing powers. The proposed new ECO powers will allow for an obligation to be set in such a way as to drive delivery of these measures as well.

141. Many of the powers needed to establish the new ECO were conferred by section 41A of the Electricity 1989, section 33BC of the Gas Act 1986 and section 103 of the Utilities Act 2000. These existing powers enable the Secretary of State not only to set an overall carbon emissions reduction target, but also to require obligated companies to meet their individual targets by action taken in relation to specified types of people or specified geographical areas. However, these powers need to be amended to ensure that the new obligation can properly reflect the evolving policy landscape noted above.

142. In summary, the Bill would amend and add to the existing enabling powers in section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000 which underpin the existing CERT and CESP Orders (see the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (S.I. 2008/188, as amended) and the Electricity and Gas (Community Energy Saving Programme) Order 2009 (S.I. 2009/1905)), so as to enable the Secretary of State to:

- impose a "home-heating cost reduction target" alongside the carbon emissions reduction target (see clauses 63 and 64);

- set an overall home-heating cost reduction target (see clause 65);

- stipulate the score which should be attributed to any eligible measure promoted by an energy company;

- require a carbon emissions reduction target or home-heating cost reduction target to be met (in whole or in part) by action taken in relation to specified types of people living in specified types of property or specified areas (see clauses 61 and 62);

- require specified information from energy companies for the purposes of assessing the effectiveness of a new obligation towards meeting its policy objectives (see clause 66);

- transfer the administration and/or enforcement of the new obligation from GEMA to the Secretary of State or another body (see clause 67)

COMMENTARY ON CLAUSES

Clause 61 : Promotion of reductions in carbon emissions: gas transporters and suppliers

143. This clause amends section 33BC of the Gas Act 1986 to include additional specific criteria that the Secretary of State may use in setting requirements for how an Energy Company Obligation must be achieved.

144. Clause 61(2)(a) inserts a new subsection (5)(bb) into section 33BC. The effect of this new provision is that an order under the section will be able to require an energy company to meet the whole or any part of a carbon emissions reduction target by action taken in relation to property of a description specified in the order.

145. Clause 61(2)(a) also inserts a new subsection (5)(bc) which allows the Secretary of State to make provision that enables GEMA to direct an obligated company to achieve part of its target by action relating to a named individual.

146. Clause 61(2)(a) also inserts a new subsection (5)(bd) which enables the Secretary of State to make provision that requires obligated energy companies to consult specified organisations – for example local authorities – as a condition of a measure being eligible under the new obligation.

147. Clause 61(2)(a) also inserts a new subsection (5)(be). This new provision is designed to protect the integrity of the scheme. In the future energy companies may be required to meet two targets – a carbon emissions reduction target and a home-heating cost reduction target.

The Secretary of State will have the power to prevent companies from counting a specific action against more than one of these two targets.

148. Clause 61(2)(a) , through the insertion of new subsection (5)(c) and through the amendment made by clause 61(2)(b), enables the Secretary of State to make provision determining how actions should be scored against the target which is set.

149. Clause 61(2)(c) inserts a new subsection (5)(g) which enables the Secretary of State to make provision requiring GEMA or an alternative specified body to offer services to the obligated companies which is likely to help them achieve the new obligation, and to charge a fee for doing so.

150. Clause 61(3) makes further provision in respect of the situation envisaged in new subsection (5)(bc), see paragraph 145, enabling GEMA to require specified persons to provide information to assist it to select individuals, to specify the criteria by which GEMA should so select, to determine, or specify how GEMA should determine, which obligated companies should act in respect of a given individual, enabling GEMA to provide relevant information to that obligated company, and to specify when the direction should be complied with, and the circumstances in which it need not be complied with.

151. Clause 61(3) also inserts a new subsection (5B) into section 33BC that allows for the Secretary of State to provide that an action receives a greater score than it would otherwise do where it relates to individuals of a specified description, properties of a specified description, or a combination of those two criteria.

152. Clause 61(4) inserts two new subsections into section 33BC: new subsection (9A) allows the Secretary of State to make provision requiring GEMA to produce guidance material to obligated companies whilst new subsection (9B) provides that the Secretary of State may issue directions to GEMA, and that GEMA should carry out its functions in accordance with any direction.

153. Clause 61(5) makes provision reflecting the Scottish devolution settlement in its application to the powers of the Secretary of State under section 33BC of the Gas Act 1986. Subsection (5) requires the Secretary of State to obtain the consent of Scottish Ministers before making an order which contains provision under subsection (2)(b) which will extend to Scotland and which is within the legislative competence of the Scottish Parliament.

154. Clause 61(6) makes provision enabling the negative resolution procedure to apply in respect of any amendments made to an earlier order which are of a particular type. At present all orders under section 33BC are subject to the affirmative resolution procedure.

155. Clause 61(7) inserts a definition of the "home-heating cost reduction target".

Clause 62 : Promotion of reductions in carbon emissions: electricity generators, distributors and suppliers

156. This clause amends section 41A of the Electricity Act 1989 in the same way that clause 61 amends section 33BC of the Gas Act 1986

157. However, clause 62(8) qualifies the power in section 41A so that the Secretary of State cannot impose an obligation on electricity generators which will have effect after 31st December 2012.

Clause 63 : Promotion of reductions in home-heating costs: gas transporters and suppliers

158. This clause inserts new powers into the Gas Act 1986 to allow the Secretary of State to make an order which imposes on gas transporters and gas suppliers an obligation to achieve a "home-heating cost reduction target".

159. Clause 63 inserts a new section 33BD into the Gas Act 1986. Subsection (2)(a) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 33BC of the Gas Act 1986 to orders made under the new section so as to create a similar framework for establishing a separate home-heating cost reduction target.

Clause 64 : Promotion of reductions in home heating costs: electricity distributors and suppliers

160. This clause inserts new powers into the Electricity Act 1989 to allow the Secretary of State to make an order which imposes on electricity distributors and electricity suppliers an obligation to achieve a "home-heating cost reduction target".

161. Clause 64 inserts a new section 41B into the Electricity Act 1989. Subsection (2)(a) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 41A of the Electricity Act 1989 to orders made under the new section so as to create a similar framework for establishing a separate home-heating cost reduction target.

Clause 65 – Overall home-heating cost reduction targets

162. This clause inserts a new section 103A into the Utilities Act 2000 to confer a new power enabling the Secretary of State to create by order an overall home-heating cost reduction target which must be achieved by obligated energy companies.

163. The new section 103A contains subsections which mirror those in section 103 which deal with the Secretary of State's power to set an overall carbon emissions reduction target. Subsection (2) of the new section allows the Secretary of State to set more than one overall

target for a specified period. Subsection (3) allows the Secretary of State to make provision requiring GEMA to apportion the overall target between gas transporters or suppliers and electricity distributors and suppliers according to criteria specified in an order. New subsection (4) requires GEMA to exercise its functions in a manner which it considers is best calculated to result in the achievement of the overall target.

164. The new section 103A also contains subsections (5) and (6). Subsection (5) requires the Secretary of State to undertake a consultation with those listed along with such other persons as the Secretary of State considers appropriate before making an order under this new section. Subsection (6) provides that an order made under this section is subject to the affirmative resolution procedure.

Clause 66 : Power of Secretary of State to require information: carbon emissions reduction targets and home-heating cost reduction targets

165. This clause inserts a new section 103B into the Utilities Act 2000 to enable the Secretary of State, by notice, to require information from energy companies and GEMA for the purposes listed in subsection (1).

166. In summary, the purposes listed in subsection (1) are to enable the Secretary of State to decide whether to make a carbon emissions reduction order or a home heating cost reduction order, to review the operation and effect of any such order made and also for the purpose of establishing or maintaining a record of the properties which have received measures under either type of order.

167. Subsection (2) of new section 103B allows the Secretary of State to, by notice, require gas transporters and gas suppliers, electricity distributors and electricity suppliers, and GEMA to provide specified information or information of a specified kind within specified periods or intervals to the person who establishes and maintains a measures record on behalf of the Secretary of State. Subsection (3) describes those who fall within the scope of the information gathering power in this new section whilst subsection (4) makes provision enabling the Secretary of State to make provision in a notice dealing with the form in which information must be provided and the time in which it must be provided.

168. The effect of subsection (5) of new section 103B is that a notice under the section will not be able to require a person to provide information which the person could not be compelled to provide in evidence in civil proceedings in court.

169. Subsection (6) of new section 103B enables the Secretary of State to share any information obtained under the section with Welsh and Scottish Ministers for the purposes of enabling them to review the operation and effect in Wales and Scotland respectively of either the carbon emissions reduction order or the home-heating cost reduction order.

Clause 67 : Power of Secretary of State to transfer functions of the Gas and Electricity Markets Authority

170. This clause inserts a new section 103C into the Utilities Act 2000, which by virtue of new subsection (1) enables the Secretary of State, by order, to transfer any of GEMA's functions under a carbon emissions reduction order or a home heating cost reduction order to the Secretary of State or another public body.

171. Subsections (2) and (3) of new section 103C make provision enabling the Secretary of State to provide the person or body to whom any functions are transferred under subsection (1) with enforcement powers. Subsection (2) also enables the Secretary of State to make provision preventing GEMA from exercising any of its enforcement functions in respect of any requirements which another person or body has been given the powers to enforce.

172. Subsection (4) of new section 103C provides that in carrying out any function transferred by an order under the section, the transferee is to be treated as if that person were GEMA for the purposes of the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

173. Subsection (5) of new section 103C requires the Secretary of State to undertake a consultation with those listed along with such other persons as the Secretary of State considers appropriate before making an order to transfer any of GEMA's functions. Subsection (6) of the new section provides that an order made under the section is subject to the affirmative resolution procedure.

Clause 68 : Minor and consequential amendments

174. This clause refers to Schedule 1 which contains minor and consequential amendments relating to this Chapter (Chapter 4).

CHAPTER 5: INFORMATION ABOUT ENERGY CONSUMPTION, EFFICIENCY AND TARIFFS

Smart Meters

SUMMARY AND BACKGROUND

175. The Coalition's Programme for Government sets out the Government's commitment to rolling out smart meters, and sets the strategic context for the roll-out of smart meters alongside the establishment of a smart grid.

176. The Smart Metering Prospectus[4] published in July 2010 sets out proposals about how smart metering will be delivered, including: the design requirements for meters; the arrangements for a central data communications body; data management; and the approach to roll-out. It represents the joint views of DECC and GEMA.

177. The Secretary of State already has broad powers to implement and direct the roll-out of smart meters under sections 88-91 of the Energy Act 2008.

178. The provisions in the Bill will amend the smart meter powers in the Energy Act 2008, Gas Act 1986, and Electricity Act 1989, so that they expire in November 2018 rather than November 2013 and will ensure the Government has the appropriate powers to address any unforeseen issues which arise in the later stages of roll out and to ensure the projected economic and other benefits of the roll-out are achieved (as set out in the Impact Assessment).

COMMENTARY ON CLAUSES

Clause 69 : Smart meters

179. This clause amends the Secretary of State powers in section 88 of the Energy Act 2008, sections 41HA-HB of the Gas Act 1986, and sections 56FA-FB of the Electricity Act 1989.

180. Subsections (2) and (6) amend section 88 of the Energy Act 2008 to enable the Secretary of State to modify a condition of electricity transmission licences, or any agreements or documents made under such licences, for the purposes of rolling out smart meters.

181. Subsection (3) amends section 88(3) of the Energy Act 2008 to make clear that the Secretary of State can require the provision of information by licence-holders to Ofgem or the Secretary of State, to enable them to assess any matter relating to the provision, installation, or operation of meters.

182. Subsection (4) amends section 88(4) of the Energy Act 2008 to make clear that the Secretary of State can make area-based licence or code modifications where these are necessary to roll-out smart meters.

183. Subsections (5), (7) and (8) amend section 88(5) of the Energy Act 2008, section 41HB(2) of the Gas Act 1986, and section 56FB(2) of the Electricity Act 1989 to extend the period within which the Secretary of State can exercise the powers until 1st November 2018.

[4]http://www.decc.gov.uk/assets/decc/Consultations/smart-meter-imp-prospectus/220-smart-metering-prospectus-condoc.pdf

Energy Performance Certificates

SUMMARY AND BACKGROUND

184. The Climate Change Act 2008 places a duty on Government to reduce overall carbon emissions by at least 80% by 2050. In the Government's view, meeting this target will in practice need the country to minimise the energy used in heating and lighting buildings (i.e. radically improving energy efficiency) and decarbonising the sources of energy used to heat and light buildings.

185. Buildings are responsible for about 40% of the UK's total carbon emissions and it is estimated that 75% of the buildings that will exist in 2050 have already been built.

186. Energy Performance Certificates (EPCs), Display Energy Certificates (DECs) and Air Conditioning Reports (ACRs) are currently made available to those persons authorised under Regulations 33–37 of the Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007 (the 2007 Regulations). Making energy performance data additionally available to accredited Green Deal providers will enable them to provide information, support, offers and advice to consumers who currently have an EPC. It is likely providing help and information in this way will result in at least some consumers, who would not otherwise have done so, making changes to their property which will improve the energy performance and reduce carbon emissions.

187. The 2007 Regulations implement the Energy Performance of Buildings Directive (Directive 2002/91/EC) also implemented in the Building Regulations 2010, but those regulations are not relevant for purposes of this Bill). This directive lays down requirements for the production of EPCs when buildings are sold, constructed or rented out, DECs in large public buildings over 1,000m^2 and frequently visited by members of the public, and regular inspections of air-conditioning systems.

188. The proposals will give the Secretary of State powers to make regulations (including regulations amending the 2007 Regulations) with a view to removing certain restrictions on access to data from EPCs, DECs and ACRs. (Note: the term "EPC data" is a generic one that also covers DECs and ACRs)

COMMENTARY ON CLAUSES

Clause 70 : Access to register of energy performance certificates etc: England and Wales and Clause 71 : Access to register of energy performance certificates: Scotland

189. Clause 70 permits the Secretary of State to make regulations enabling changes to be made in respect of the disclosure of documents and information held on the Register of Certificates, Recommendation Reports and Advisory Reports by the Secretary of State. The

clause will enable the Secretary of State to make data relating to EPCs, DECs and ACRs more publicly available than the current regulations allow.

190. Subsection (2) enables the Secretary of State, through regulations, to restrict access to documents and data, or specified parts of such documents or data, from disclosure to a specified description of persons and to exclude documents or data from disclosure where they relate to a specified description of buildings. This subsection also allows the Secretary of State to limit the number of disclosures to persons as specified in the regulations, to specify conditions to which persons to whom disclosure is to be given are to be subject, and to impose sanctions for non-compliance with such conditions.

191. Subsection (5) makes various supplementary provision and provides that regulations to be made under this clause shall be made by statutory instrument subject to, under subsection (6), the negative resolution procedure. Subsection (7) makes it clear for purposes of this clause that the reference to disclosure of a document or data includes a reference to disclosure of information derived from a document or data.

192. Clause 71 makes similar provision in respect of Scotland but also enables Scottish Ministers to make provision requiring a person keeping a register to disclose specified information or data.

Information about tariffs

SUMMARY AND BACKGROUND

193. As set out in the Coalition's Programme for Government, the Government would like to increase households' control over their energy costs by ensuring that they receive information on how to move to cheaper tariffs offered by their supplier. Ministers decided that electricity and gas suppliers should be required to provide domestic customers with information so as to encourage customers to take action. DECC is currently working with suppliers to obtain their agreement to provide this information to consumers on a voluntary basis.

194. This section introduces a power to allow the Secretary of State to address the situation should a voluntary agreement not be forthcoming within an appropriate timeframe.

COMMENTARY ON CLAUSES

Clause 72 : Power to modify energy supply licences: information about tariffs
195. This clause provides that the Secretary of State may modify the conditions of supply licences issued under the Gas Act 1986 or the Electricity Act 1989 (subsection (1).

196. Subsections (2) to (4) give the Secretary of State powers to modify particular or standard licence conditions in order to require electricity or gas suppliers to provide their domestic customers with information about their lowest tariffs and allows the Secretary of State to specify how these tariffs should be defined, which of its lowest tariffs a supplier must provide information about and how and when the information should be provided, for example, on all energy bills and statements.

197. Subsection (5) allows the Secretary of State to make different provision in different cases, for example, to exempt suppliers who offer only a few tariffs or smaller suppliers from these requirements, and to make any consequential modifications.

198. Subsection (6) allows the Secretary of State to make different provision for different cases within a licence, for example, to require different customers to receive different information depending on their circumstances.

199. Subsection (7) provides that this power expires immediately after 1st November 2018.

200. Subsection (8) contains definitions for the purposes of this section.

Clause 73 : Power to modify energy supply licences: procedure and supplemental

201. This clause contains additional provision about the modification of licences under clause 72. Subsection (1) requires the Secretary of State to consult the holder of any licence being modified, GEMA and others as appropriate before making a licence modification. This consultation may take place before or after the passing of the Bill. Subsection (3) states that the Secretary of State must publish the modifications as soon as reasonably practicable after they are made.

202. Subsection (4) provides that the modification of part of a standard licence condition does not prevent any other part of a condition being regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 and of the Electricity Act 1989. Where the Secretary of State modifies a standard licence condition, subsection (5) provides that GEMA must incorporate the same modification in the standard conditions of licences subsequently granted.

203. Subsections (6) and (7*)* amend sections 33(1) and 81(2) of the Utilities Act 2000 so that any modifications of standard conditions are treated as incorporated in the standard conditions.

Clause 74 : General duties of the Secretary of State

204. This clause provides that in exercising any functions conferred by or under clauses 72 and 73 of the Act, the Secretary of State is bound by the principal objective and general duties set out in Part 1 of the Electricity Act 1989 and the Gas Act 1986.

PART 2: SECURITY OF ENERGY SUPPLIES

CHAPTER 1: ELECTRICITY SUPPLY

SUMMARY AND BACKGROUND

205. The increase in low carbon generation will cause significant changes to the way the electricity market operates. For example, companies running conventional generating stations that can operate when sufficient electricity is not being produced from intermittent low-carbon sources (e.g. when the wind is not blowing) will have to make their required returns in fewer running hours than today.

206. This increases the importance of effective monitoring of whether the market is functioning so that sufficient capacity is made available to meet customers demand. Effective monitoring requires a benchmark against which expected levels of capacity can be assessed.

207. These measures set out the process in which this benchmark will be established. There are two stages. Firstly, GEMA will report to the Secretary of State with a number of assessments of how much capacity Great Britain (GB) will need in future (Northern Ireland is part of a different electricity market). Secondly, the Secretary of State will publish his assessment of future capacity need.

COMMENTARY ON CLAUSES

Clause 75 : Report by Gas and Electricity Markets Authority on security of electricity supply

208. This clause establishes the requirement for GEMA to report annually to the Secretary of State with its assessment of how much capacity GB will need in the future. The total capacity need is that which can meet peak demand while still maintaining an appropriate margin of spare supply to cope with unexpected events.

209. Subsection (1) requires GEMA to prepare a report in accordance with subsection (2), before 1st September 2012 and before that date in any subsequent calendar year; and send that report to the Secretary of State.

210. Subsection (2) requires GEMA to report on peak demand for the supply of electricity, and to provide a range of assessments of the capacity margin needed for that supply.

211. Subsection (3) states the report must cover the position for each of the four years following publication of the report, and enables the Secretary of State to specify different reporting periods by order.

212. Subsection (5*)* sets out variables the assessment must take into account, including the generation of electricity, operation of interconnectors, storage of electricity and extent to which available capacity may be lower than maximum capacity. Subsection (6*)* allows the assessment to be made based on information provided by existing expertise, including the holder of a transmission licence or any other person.

213. Subsection (7) permits the Secretary of State to give GEMA directions regarding the form of the report and the manner in which it must be expressed or sent.

214. Subsection (8*)* contains definitions for the purposes of this clause.

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

215. This clause establishes the requirement for the Secretary of State to publish his view on what electricity supply capacity is needed to meet demand, including spare capacity to cope with unexpected events. It amends the Energy Act (2004), under which the Secretary of State is already required to report on security of supply, including reporting on his assessment of generating capacity in Great Britain.

216. Subsection (2) requires the Secretary of State, in addition to the existing requirements set out in section 172 of the Energy Act 2004, to set out in the report, his assessment of the capacity needed to meet demand for electricity in Great Britain. As set out in clause 75, that assessment must: be included from 2012 and in each subsequent year; cover each of the four years following the year of the report and or any other periods the Secretary of State may specify by order; and take account of a number of variables.

CHAPTER 2: GAS SUPPLY

SUMMARY AND BACKGROUND

217. A Gas Supply Emergency would occur if the gas pressure in the network was insufficient to maintain supplies to all customers safely. The outcome would be that gas consumers could be directed to stop taking gas or have their gas supplies isolated by their gas transporter.

218. For the pressure in the network to be maintained there has to be a balance between gas supply and demand. Gas taken from the network by consumers has to be replaced by gas flowing into the network from producers, gas processing facilities, storage facilities, interconnector pipelines and Liquid Natural Gas (LNG) import facilities.

219. In a severe winter gas demand goes up as households use more gas for heating and other consumers (such as power stations) increase their demand on the network. This demand has to be met but is reliant on gas being available at the right place and time. If there is not enough gas available, demand has to be cut to maintain the safe pressure in the network.

220. Studies[5] commissioned by DECC concluded that there are certain scenarios, with a low but not negligible probability, which could have a high impact on gas consumers in Great Britain. The impacts of such events could lead to voluntary gas supply disruption and/or very high wholesale prices.

221. The provisions grant powers to GEMA to review the current gas emergency arrangements with a view to strengthening the market incentive mechanism for ensuring sufficient gas is available. With this proposed new power GEMA could, following consultation with industry, direct changes to the code that would allow them to manage a gas supply emergency; for example, allowing them to make the price, which suppliers who are short of gas are required to pay in an emergency, more responsive to market prices.

COMMENTARY ON CLAUSES

Clause 77 : Power of the Gas and Electricity Markets Authority to direct a modification of the Uniform Network Code

222. This clause gives a power to the Gas and Electricity Markets Authority (GEMA) to direct a modification of the Uniform Network Code. The Uniform Network Code (UNC, or "the Code") is a legal document which forms the basis of the arrangements between companies that transport gas, and those whose gas they transport.

223. Subsection (1) inserts a new section 36C into the Gas Act 1986, which allows GEMA to direct a modification to the UNC, which must be in relation to a gas emergency, and only if the Authority considers it to be a market based modification. The subsections within the new section 36C set out a number of conditions concerning the circumstances and way in which GEMA may modify the UNC, including: that the Authority may only direct a modification if it considers that it will decrease the likelihood of a gas supply emergency occurring and/or decrease the duration or severity of a gas supply; and only after consultation with appropriate persons.

224. Subsection (2) states that the said requirement for consultation in the new section 36C may be undertaken before the commencement of the Act.

225. Subsections (4) to (6) ensure that in the event that a change were made to the UNC, those parties directly affected by the change would be able to appeal to the Competition Commission under amendments to rules set out in the Energy Act 2004 (sections 173–175 and Schedule 22 of that Act).

[5] http://www.decc.gov.uk/en/content/cms/what_we_do/uk_supply/markets/gas_markets/gas_markets.aspx

CHAPTER 3: UPSTREAM PETROLEUM INFRASTRUCTURE

SUMMARY AND BACKGROUND

226. This Chapter provides a single procedure for resolving access disputes, in relation to any kind of upstream petroleum infrastructure. It re-enacts and streamlines the existing provisions for third party access to upstream oil and gas infrastructure; the current provisions for which are spread across four Acts of Parliament (the Petroleum Act 1998, the Pipelines Act 1962, the Gas Act 1995 and the Energy Act 2008) which contain different processes, requirements and definitions, with some types of infrastructure not explicitly covered by the various definitions. These are replaced with one set of requirements covering access to all relevant platforms, pipelines and terminal.

227. As in the existing legislation, anyone seeking access, but who is unable to secure the rights by agreement with the owner of the infrastructure, may apply to the Secretary of State for a notice granting the relevant rights. The new procedure specified for considering any such application, and the safeguards provided for the interests of the owners and of the holders of existing rights in the infrastructure concerned, are similar to those in the existing legislation.

228. The Chapter gives the Secretary of State new powers to seek information about the progress of access negotiations; and where there is no realistic prospect of negotiations succeeding, to issue a notice granting relevant rights, without an application from any party.

229. In addition, a new provision to allow for variation of an access notice once issued is included, which will enable amendments to be made to a notice without having to restart the dispute resolution procedure from the beginning.

COMMENTARY ON CLAUSES

Clause 78 : Acquisition of rights to use upstream petroleum infrastructure

230. This clause sets out the procedure for where a person who has previously sought to secure access to a relevant pipeline or facility by application to the owner, but who has not been able to reach agreement with the owner, may apply to the Secretary of State for a notice granting that access. It sets out: the circumstances within which an access dispute may be resolved by the Secretary of State; the considerations the Secretary of State must take into account when deciding how to deal with the application; and the process the Secretary of State must follow.

231. Subsections (1) and (2) set out the scope of the dispute resolution procedure, including the persons involved, the types of infrastructure addressed and its geographical extent.

232. Subsection (3) allows a person who has previously sought to secure access to a relevant pipeline or facility by application to the owner, but who has not been able to reach agreement with the owner, to apply to the Secretary of State for a notice granting that access.

233. Under subsection (4), the Secretary of State may not consider such an application unless satisfied that the applicant and owner have had a reasonable time in which to reach an agreement.

234. Subsection (5) requires that the Secretary of State must first consider whether the application should be adjourned to enable further negotiation, considered further, or rejected. In the event that he decides to give it further consideration, he must give an opportunity to be heard to the applicant and the owner, to anyone with usage rights in the pipeline or facility, to the Health and Safety Executive and such other persons as he considers appropriate.

235. Subsection (6) lists a number of matters which the Secretary of State must, so far as relevant, take into account in giving further consideration to such an application; including the capacity which may reasonably be made available, incompatibilities of technical specification, the reasonable needs of the owners, and the interests of other parties.

236. Subsection (7) provides that the Secretary of State may only issue an access notice if satisfied that it will either not prejudice the reasonable expectations of the owners and their associates, or the exercise of existing rights by other parties in respect of conveyance or processing (subsection (8)); or that the notice contains provision for compensation to be paid to any person who suffers loss as a result of any such prejudice (subsection (9)).

237. Subsections (10) and (11) provide for any such notice to contain such provision as the Secretary of State thinks necessary to secure the applicant an effective right of access and any appropriate ancillary rights; to regulate the charges for the right granted; to allow the owner to recover payments by way of consideration for any right granted; and to permit assignment of the right.

238. Subsection (12) provides that a notice under subsection (10) must be given to both the owner and the applicant, and, in the event that it contains any compensation provision under subsection (9), to any person with relevant rights; and does not come into force unless accepted by the applicant within the time specified.

239. Subsection (15) defines the "owner" of any upstream infrastructure for the purposes of this clause and clause 79.

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

240. This clause sets out the new process by which the Secretary of State may issue an access notice on his or her own initiative.

241. Subsection (1) limits the use of the power to situations in which an access application has been made to an owner, but the owner and the applicant do not reach agreement on the application. Where it applies, subsection (2) allows the Secretary of State to issue an access notice, but subject to clause 78 (7) above, and to the two following subsections.

242. Under subsection (3), the Secretary of State may not issue such a notice unless satisfied that the applicant and owner have had a reasonable time in which to reach an agreement (as in clause 78); but must further be satisfied that there is no reasonable prospect of them doing so.

243. Under subsection (4) the Secretary of State must, in considering whether to exercise the power, take into account the matters specified in clause 78 (6) and also give an opportunity to be heard to the persons identified in clause 79 (5).

Clause 80 : Compulsory modification of upstream petroleum infrastructure

244. This clause deals with compulsory modifications to the infrastructure in question, where it appears that these will be necessary to give effect to an access right sought under clause 78.

245. Subsection (1) provides that the clause applies where an application has been made to an owner, and the Secretary of State is considering whether to give an access notice under clause 78 (10).

246. Subsection (2) enables the Secretary of State to issue a notice requiring modifications to the pipeline or facility in question, where it appears to him that this can and should be done in order to increase the capacity of the pipeline or facility, or to connect to the applicant's pipeline.

247. Subsection (3) provides that such a notice must: specify the modifications to be made and the recompense due to the owner; require the applicant to make appropriate arrangements to secure payment of these sums; require the owner to make the modifications if the payment arrangements are made; and authorise the owner to recover the relevant sums from the applicant when the modifications are made.

248. Subsection (4) provides that the notice may also provide for compensation for any loss which may be incurred by other users as a result of the making of the modifications; and subsection (5) provides that a notice containing any such provision is to be given to any person with relevant rights, as well as to the owner and the applicant.

249. Subsection (6) provides that before giving such a notice, the Secretary of State must take into account the matters specified in 78 (6), and must give an opportunity to be heard to the persons specified in clause 80 (7).

250. Subsection (9) defines the "owner" of any upstream infrastructure for the purposes of this clause - it should be noted that this definition is more limited than that which applies in clauses 78 and 79.

Clause 81: Variation of notices under section 78 and 80

251. This clause allows for variation of notices under clauses 78 and 80 once they have been issued, enabling amendments to be made to a notice without having to restart the dispute resolution procedure from the beginning.

252. Subsection (1) allows the persons to whom notice is given, to agree to vary or set aside the notice.

253. Subsection (2) allows the Secretary of State to vary a notice on the application of one of the persons to whom it has been given.

254. Subsection (3) provides that he may do so only if satisfied that it is necessary to resolve a dispute about the notice between its recipients.

255. Subsection (4) requires the Secretary of State to give an opportunity to be heard to the persons specified in the subsection.

Clause 82 : Publication of notices and variations

256. This clause allows the Secretary of State to publish any access notice, modification notice or variation notice, in whole or in part or in summary. But before doing so, he must give an opportunity to be heard to the persons to whom the notice has been given and to such other persons as he considers appropriate (subsection (3)).

Clause 83 : Powers of Secretary of State to require information

257. This clause gives the Secretary of State new powers to require information about the progress of access negotiations.

258. Subsection (1) provides that where the Secretary of State has reason to believe that an application for access to upstream infrastructure has been made, he may require either the applicant or the owner to confirm this.

259. Subsection (2) allows the Secretary of State to require any applicant or owner to provide such information as he may specify, in order for him to decide whether to exercise any function under clauses 78, 79 and 80 , and if so, how.

260. Subsections (3) and (4) provide analogous powers to require information from anyone seeking a variation of an access notice, and from the other person to whom the notice in question was given.

261. Subsection (5) confirms that the information which may be required includes financial information.

262. Subsection (6) requires the Secretary of State not to disclose information supplied under this clause except with the consent of the person who supplied it, or in accordance with his or her statutory obligations.

Clause 84 : Enforcement

263. This clause provides for the enforcement of the requirements imposed in this Chapter.

264. Subsections (1) to (3) create a new offence, for the giving of false information to the Secretary of State for the purpose of influencing the exercise of his functions under this Chapter. This offence can be committed either when a person knows or believes the information in question is false, or is reckless as to whether the information is false. A person guilty of such an offence is liable to a fine not exceeding level five on the standard scale (currently £5000 in both England and Wales, and Scotland).

265. Subsections (4) to (6) make related provision for proceedings, and for offences by bodies corporate, in relation to that offence.

266. Subsection (7) provides that the duty of a person to comply with an access notice or a modification notice is a duty owed to any person who may be affected by a failure to comply with it.

267. Subsection (8*)* provides that any such duty may be enforced by a person to whom it is owed, as if it were a contractual right.

268. Subsection (9) provides that the duty of a person to comply with an information request under clause 83 is enforceable by civil proceedings by the Secretary of State.

Clause 85 : Minor, consequential and supplemental provision

269. This clause, and Schedule 2 of the Bill, provide for various matters which are consequential or supplemental to the main provisions of this Chapter.

270. The Schedule amends the parts of the Petroleum Act 1998, and the Pipelines Act 1962, which set out the current regime for third party access to offshore pipelines, and for onshore pipelines, respectively, so that they no longer apply to upstream petroleum infrastructure within the scope of this Chapter. They do however continue in effect so far as other pipelines are concerned (in particular, the 1962 Act continues in effect with respect to onshore pipelines which are not upstream petroleum pipelines). The Schedule therefore provides amendments which are necessary to ensure that the new regime does not conflict with the existing regime.

271. The Schedule also provides for the repeal of certain provisions of the Gas Act 1995 and the Energy Act 2008, which are entirely subsumed by the new provision in this Chapter.

Clause 86 : Interpretation

272. This clause provides definitions for various terms used in the Chapter. The definitions of "upstream petroleum pipeline", "gas processing facility" and "oil processing facility" are of particular importance, being central to the scope of the Chapter – see Clause 78 (1), etc. These three definitions in turn depend on the meaning of other terms defined in this clause. The definition of "payments" is also of note since it allows for payment to be given in money or money's worth – in other words, it provides for payments in kind.

CHAPTER 4: SPECIAL ADMINISTRATION

SUMMARY AND BACKGROUND

273. Special administration regimes are an alternative to general administration law. They are generally designed to ensure uninterrupted and safe operation of essential services in the event of a company becoming insolvent. A special administration regime already exists for electricity and gas transmission and network distribution companies.

274. In relation to energy (electricity or gas) supply companies, the current arrangements, in the event of an energy supply company becoming insolvent, provide for Ofgem to revoke the insolvent company's licence and appoint another supplier to take on its customers. The appointed company is known as the 'Supplier of Last Resort'. This process has been tested several times over the last few years when small suppliers have become insolvent. However, these experiences have shown that it is unlikely that the process would be effective in relation to a large supplier failing because of the large volume of customers involved.

275. Where a large number of customers are involved it may not be possible to transfer them to a Supplier of Last Resort promptly. In the period before the customers are transferred they would continue to be supplied at potentially greater cost with energy bought through the balancing and settlement mechanisms rather than under contract. This would result in large transfers of cost from the insolvent supplier to other industry participants, putting industry systems under strain and reducing stability in the market.

276. This Chapter will create a special administration regime for energy suppliers to supplement the Supplier of Last Resort mechanism. Where a trade sale of the financially struggling energy supply company is not possible, and the Supplier of Last Resort mechanism would not be effective, this special administration regime may be applied to the company to ensure customers continue to be supplied without potentially large and unpredictable costs being transferred to other supply companies. As the current market arrangements require other industry participants to pay for the electricity and gas consumed by a failed supplier's

customers, if that supplier defaults on the charges for the energy consumed, there is a risk of contagion, threatening market stability. A special administration regime addresses these risks.

277. The new provisions will allow the Secretary of State (or Ofgem with the Secretary of State's consent) to apply to the court for a special administration order. The court would be able to grant the order only if the current statutory tests for insolvency were met. If appointed, a special administrator would continue to contract to supply gas and electricity to customers until the company is rescued, sold or its supply activities transferred to other companies. He/she would be required to conclude special administration as quickly and as effectively as reasonably practicable.

COMMENTARY ON CLAUSES

Clause 88 : Energy supply company administration orders

278. This clause provides that a court may make an energy supply company administration order (esc administration order) in relation to an energy supply company. An energy supply company is defined in subsection (5) as a company that holds a licence from Ofgem to supply gas or electricity.

279. Subsection (1) describes an esc administration order as an order made by the court in relation to an energy supply company, which directs that the affairs, business and property of the company are to be managed by a person appointed by the court, while the order is in force.

280. Subsections (2) and (3) explain that the person appointed by the court for the purposes of an esc administration order is known as the "energy administrator", who must perform the duties of an energy administrator to achieve the objectives set out in clause 89.

281. Subsection (4) provides that an energy administration order applies only to those affairs and business of a non-GB company which are carried out in Great Britain and to its property in Great Britain.

Clause 89 : Objectives of an energy supply company administration

282. This clause states the objectives of an energy supply company administration.

283. Subsection (1*)* states the objectives as: ensuring that the supply of gas and electricity to customers is continued at the lowest cost which it is practicable to incur; and making continuation of the energy supply company administration unnecessary by rescuing the company or making a transfer in accordance with subsection (2).

284. Subsection (2) stipulates the ways the continuation of energy supply company administration may be made unnecessary. These are either the rescue of the energy supply company as a going concern or transfers which satisfy subsection (3). Subsection (3*)* states

what type of transfers are permissible under the clause, and subsection (4) provides for how such transfers may take place.

285. Subsection (5) provides that rescue is to be preferred to transfer in achieving the objective of energy supply company administration and states that transfers are only to be effected when; rescue is not reasonably practicable without transfers; where the objective of the energy supply company administration cannot be achieved through rescue without transfers; or where such transfers would produce a better result for the creditors or members of the company.

Clause 90 : Application of certain provisions of the Energy Act 2004 in relation to esc administration orders

286. This clause modifies the provisions in sections 156 to 167 of and Schedules 20 and 21 to the Energy Act 2004 (the existing special administration regime for energy licensees), and sections 171 and 196 (interpretation) so they apply in relation to an esc administration order.

287. The provisions applied include:

- Section 156 of the Energy Act 2004, which provides that an application to the court for an esc administration order can be made only by the Secretary of State or by the Gas and Electricity Markets Authority (GEMA) with the consent of the Secretary of State*;*

- Section 157 which empowers the court in relation to an application for an esc administration order. The court can make an esc administration order only if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Secretary of State under section 124A of the Insolvency Act 1986 (c.45) it would be just and equitable (aside from the objective of energy supply company administration) to wind up the company in the public interest;

- Section 158 which stipulates the status of the energy supply company administrator. It provides that the administrator must exercise management functions for the purpose of achieving the objective of the energy supply company administration as quickly and efficiently as is reasonably practicable and must exercise powers and perform duties in the manner which, in so far as it is consistent with the objective of the energy supply company administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;

- Section 159 and Schedules 20 which apply the rule making power in section 411 of the Insolvency Act 1986 (c.45). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to energy supply company administration. It also grants the Secretary of State the power to make such

modifications to primary legislation relating to insolvency (including the provisions of the Bill) as the Secretary of State considers appropriate in relation to energy supply company administration;

- Schedule 21 which provides for the transfers to another company or companies as a going concern of so much of the energy supply company's assets as are necessary to ensure that the objective of the energy supply company administration is met. Such transfer schemes are to be made by the energy supply company administrator with the approval of the Secretary of State, after he has consulted GEMA;

- Sections 160 to 164 which prevent energy supply administration being frustrated by prior orders of various types being granted before the Secretary of State or Gas and Electricity Markets Authority have been given an opportunity to apply for an esc administration order or by other steps being taken when an esc administration order has been made or an application is outstanding;

- Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in energy supply company administration in order to achieve the objective of energy supply company administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;

- Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the energy supply company administrator's powers and duties;

- Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to an energy supply company in energy supply company administration; and

- Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

Clause 91 : Conduct of administration, transfer schemes etc

288. This clause gives the Secretary of State powers to make rules under section 411 of the Insolvency Act 1986 in order to give effect to this Chapter.

Clause 92 : Modifications of particular or standard conditions

289. This clause confer powers on the Secretary of State to modify the condition of any gas or electricity licence held by a particular person in order to recover any shortfall in meeting the costs of energy supply company administration. The modifications that can be made are specified in clause 93.

290. Subsection (3) to (6) require the Secretary of State to consult the holder of any licence being modified and anyone else he thinks appropriate before making a modification and to publish modifications made under this clause.

291. Subsection (8) stipulates the requirement on GEMA to incorporate any modification of standard conditions made by the Secretary of State into new licences it grants and to publish these modifications.

292. Subsection (9) limits the exercise of the powers under this clause to eighteen months after commencement of this clause.

Clause 93 : Licence conditions to secure funding of energy supply company administration

293. This clause specifies the modifications that the Secretary of State can make to gas and electricity licences to secure funding of energy supply company administration.

294. Subsection (1) and (2) state the modifications that may be made under include requiring the holder of the licence to raise the charges imposed by them so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of an energy supply company available to meet the expenses of energy supply company administration. This will allow the costs of special administration to be recouped via the licence mechanism from the industry and ultimately from consumers.

295. Subsection (3) defines a "shortfall" in meeting the expenses of energy administration as the property of the company being insufficient to meet the costs of energy supply company administration. It also defines making payment to make good the shortfall as discharging 'relevant debts' which cannot otherwise be met out of the available property.

296. Subsection (4) defines relevant debts and includes obligations to repay the grants, loans, sums paid out under an indemnity and sums paid out under guarantees under sections 165, 166 and 167 of the Energy Act 2004 as applied by clause 90 of the Bill.

Clause 94 : Modifications under the Enterprise Act 2002

297. This clause provides the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the Enterprise Act 2002 and includes a power to make consequential modifications to this Chapter of the Act where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Clause 95 : Power to make further modifications of insolvency legislation
298. This clause gives the Secretary of State the power to make modifications to any provisions under this Chapter. This power is designed to enable the Secretary of State to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern. This is particularly so as the energy market continues to develop rapidly.

Clause 96: Interpretation of this Chapter
299. This clause defines the terms used in clauses 88 to 94 to.

CHAPTER 5: UK CONTINENTAL SHELF

SUMMARY AND BACKGROUND

300. Under the current law (the Continental Shelf Act 1964), once an Order has been made designating as UK continental shelf it cannot be revoked (unless the revocation is for the purpose of consolidating the Order). This clause amends the Continental Shelf Act 1964, to allow such orders to be revoked, thereby providing flexibility in managing the UK continental shelf resource, and including hydrocarbon resources, thus contributing to improved energy security for the UK.

301. For example, there are two small areas which were previously designated to Ireland as Irish continental shelf. However, being more than 200 nautical miles from Irish baselines, these cannot form part of an Irish Exclusive Economic Zone. As part of a comprehensive agreement with Ireland about maritime zones, we would like to transfer those two areas back to the UK. The UK will then in return transfer two areas of the same dimensions to Ireland. However, that would require us to de-designate those areas as UK continental shelf, which the current law does not allow. The new provisions will allow us to de-designate the two areas.

COMMENTARY ON CLAUSES

Clause 97 : Revocation etc of designations under Continental Shelf Act 1964
302. This clause enables designations under section 1(7) of the Continental Shelf Act 1964 to be revoked, amended and re-enacted. This will provide flexibility in making arrangements about maritime boundaries with the United Kingdom's neighbours by enabling us to swap areas which have already been designated under section 1(7).

PART 3: LOW CARBON GENERATION

Offshore electricity

SUMMARY AND BACKGROUND

303. DECC and Ofgem have developed a new regime aimed at connecting offshore wind generating stations to the Great Britain onshore grid in a cost effective, timely and secure way. The regime involves Ofgem running competitive tenders for offshore transmission owners (OFTOs) to own and maintain (as well as design, finance and construct where required) the transmission assets for connecting offshore renewable projects to the onshore grid. All offshore transmission assets to date have been built and operated by offshore wind generating station developers.

304. The framework for the new regime was established on 24th June 2009 (known as 'go active') following which Ofgem started tenders for OFTOs to be responsible for the connections for nine existing offshore wind projects. The regime is being delivered in two parts:

- the 'transitional' regime for existing projects whereby generators will continue to build (or have already built) their own connections which are then transferred to an OFTO selected by Ofgem to operate and maintain (OFTOs purchase the assets from generators and in return generators pay the OFTO an annual fee for 20 years); and

- the 'enduring' regime, which will apply to future projects and may involve a generator or an OFTO constructing the connections.

305. DECC and Ofgem have consulted[6] on the implementation of the enduring regime, which would give generators the choice of either constructing their own connections and transferring them to an OFTO to operate (a "generator build" option along the lines of the 'transitional' arrangements) or alternatively having an OFTO appointed to both construct and operate the connections. Industry codes and licences will need to be modified to implement the enduring regime. However, the Secretary of State's powers to make modifications are about to expire.

306. The provisions in the Bill will therefore extend the time period in which the Secretary of State may exercise his existing powers under the Energy Act 2004 to amend offshore transmission and distribution (as these powers expire on 18th December 2010).

[6] http://www.decc.gov.uk/assets/decc/Consultations/offshoreElectricityTransmission/424-condoc-offshore-electricity-transmission.pdf and http://www.decc.gov.uk/assets/decc/Consultations/offshoreElectricityTransmission/873-offshore-electricity-transmission-condoc2.pdf

307. The Bill also amends the Electricity Act 1989 so as to allow the Secretary of State to make an order extending GEMA's powers to make property transfer schemes under that Act. This is to facilitate the transfer of OFTOs of transmission assets built by generators.

308. By extending these powers, the provisions in the Bill enables the implementation of the enduring offshore electricity transmission regime, with a generator build option beyond 2010.

COMMENTARY ON CLAUSES

Clause 98 : Offshore transmission and distribution of electricity: extension of time for licence modifications and property scheme applications

309. Subsections (1) and (2) of this clause extend the life of powers available to the Secretary of State under sections 90 and 91 of the Energy Act 2004 to amend offshore transmission and distribution licences, and coordination licences. The powers are currently due to expire in December 2010. The extension is for eighteen months following the passing of this Bill and is intended to enable the Secretary of State to finalise the implementation of the licensing regime for the construction and operation of offshore transmission assets.

310. Subsection (3) enables the Secretary of State to extend to 2025 the life of the powers of GEMA under Schedule 2A to the Electricity Act 1989 to make property transfer schemes. GEMA's powers may be exercised where there is a tender exercise for the appointment of an offshore transmission owner and the transmission assets are not constructed or installed by the successful bidder and where affected parties are unable to agree what property or rights need to be transferred to the successful bidder (and the valuation of them). The powers to make such schemes would otherwise have expired in 2013 unless extended by order until 2016.

Decommissioning nuclear sites

SUMMARY AND BACKGROUND

311. The Energy Act 2008 put in place a legislative framework to ensure that energy companies which operate new nuclear power stations accumulate funds to cover their full decommissioning costs and their full share of waste management costs. The Energy Act 2008 requires energy companies seeking to construct any new nuclear power stations in the future to fulfil this requirement. Part 3, Chapter 1 of the Energy Act 2008 contains the legislative framework for requiring that prospective operators submit a Funded Decommissioning Programme (FDP) for approval. It also sets out how the FDP will be approved and monitored, and establishes offences for non-compliance with the FDP. It provides for regulations and guidance in relation to the preparation, content, implementation and modification of programmes.

312. Section 46 of the Energy Act 2008 allows the Secretary of State to approve, approve with modifications or conditions or reject a FDP submitted in respect of a site.

313. Section 48 allows for the Secretary of State to propose a modification to the FDP once it has been approved, and allows for the modification of any condition attached to the FDP, which may include the imposition of additional obligations on the operator or a body corporate associated with the operator (e.g. a parent company).

314. Section 49(6) of the Energy Act 2008 provides that the Secretary of State must decide whether the proposed modification is to be made and under section 49(7) the Secretary of State must exercise this power with the aim of securing that prudent provision is made for the technical matters (including the financing of the designated technical matters).

315. The new subsections in clause 99 are designed to allow the Secretary of State to enter into an agreement which provides greater clarity and certainty to the person who submits a programme over how the Secretary of State's power to modify an approved programme will be exercised.

COMMENTARY ON CLAUSES

Clause 99 : Agreement about modifying decommissioning programme

316. This clause amends the powers that the Secretary of State has under section 46 of the Energy Act 2008 when approving a funded decommissioning programme, by enabling the Secretary of State to agree to use the power to propose modifications under section 48 of the Energy Act 2008 in a particular manner or within a particular period.

317. Subsection (2) inserts new subsections 3A to 3D into section 46. These new subsections enable the Secretary of State, when approving a programme, to enter into an agreement setting out the manner in which he will, or will not, exercise the power to propose a modification to an approved funded decommissioning programme under Section 48 of the Energy Act 2008. Such an agreement may be subsequently amended by the Secretary of State and the other party mutually agreeing to do so. Further, that the Secretary of State may enter into such an agreement notwithstanding that any such agreement fetters the discretion of the Secretary of State. The amendment contained in subsection (3) provides that the power to enter into an agreement must be exercised with the aim of securing that prudent provision is made for the technical matters (including prudent financial provision for the designated technical matters).

PART 4: COAL AUTHORITY

Powers of Coal Authority

SUMMARY AND BACKGROUND

318. The Coal Authority was established by the Coal Industry Act 1994 (the 1994 Act). It has responsibility for licensing coal mining activity, repairing subsidence damage, treating coal mine water pollution, disseminating information about coal mining and subsidence and managing former coalfield property.

319. The Authority has developed considerable expertise in the treatment of mine workings and mine shafts, management of surface hazards, management of subsidence and remediation of contaminated mine water. The Government wishes to extend the Authority's powers so that it can use its expertise in a wider range of situations outside the coal mining sphere. The additional powers are intended to extend the scope of the commercial services that can be offered by the Coal Authority, but not to extend or replace the Authority's existing statutory functions.

COMMENTARY ON CLAUSES

Clause 100 and 101 : Additional powers of the Coal Authority (England and Wales) and powers of the Coal Authority: Scotland

320. These clauses amend the Coal Industry Act 1994 to supplement the Coal Authority's existing powers. They give the Coal Authority the power to take action in respect of subsidence which is not caused by coal-mining activities and water discharges not from coal-mines. This will allow the Coal Authority to offer services in these fields. These clauses provides that the Coal Authority's existing functions are not affected by this new power.

PART 5: MISCELLANEOUS AND GENERAL

Miscellaneous

SUMMARY AND BACKGROUND

321. The Home Energy Conservation Act (HECA) 1995 requires all UK local authorities with housing responsibilities to prepare an energy conservation report identifying practicable and cost-effective measures likely to result in significant improvement in the energy efficiency of all residential accommodation in their area; and to report on progress in implementing the measures.

322. In England, in the guidance the Secretary of State defined "significant" as 30%, and made clear that each authority's energy conservation report was expected to show a strategy

for making at least substantial progress towards a 30% improvement in energy efficiency in 10 – 15 years from 1st April 1996.

323. In late 2007, the Government held a public consultation exercise on the future of HECA. The consultation set out the conclusions of a review of the Act which began in autumn 2006. As part of this, the Government recommended repealing the legislation altogether in England on the basis that it had not been, in itself, responsible for improvements in energy efficiency in the household sector and was unlikely to be so in future.

324. Furthermore the Act is considered to impose an unjustifiable burden on local authorities and on DECC and the information collected under HECA is inconsistent and comparisons cannot be made.

325. The idea of repeal was supported by two-thirds of respondents to the consultation, including the majority of local authorities, the Local Government Association and the Carbon Action Network, formerly known as UK HECA (the network of HECA Officers in local authorities).

COMMENTARY ON CLAUSES

Clause 102 : Repeal of measures relating to home energy efficiency
326. This clause repeals the Home Energy Conservation Act 1995 in England, Wales and Scotland. Section 217 of the Housing Act 2004 is also repealed. Schedule 3 makes consequential amendments.

COMMENTARY ON CLAUSES

Clause 103: Extent
327. This clause sets out the territorial extent of the provisions in the Bill. All provisions in the Bill will extend to England, Wales and Scotland with the exception of:-

- clauses 35 to 47 which will extend to England and Wales only, and 48 to 60 which will extend to Scotland only. These clauses deal with energy efficiency in the private rented sector;

- clauses 9 and 11(2) to (4) which will extend to England and Wales only, and clause 10 and 11(5) to (7) , which will extend to Scotland only. These clauses deal with the recording of information about green deal plans on a specified document and the updating of that information;

- clause 13(3) to (5) , which will extend to England and Wales only, and 13(6) to (8), which will extend to Scotland only. These clauses deal with acknowledgment of the green deal plan; and

- clause 100 which will extend to England and Wales only and clause 101 which will extend to Scotland only. Both clauses relate to additional powers of the Coal Authority.

328. Subsection (4) explains an amendment or repeal of an enactment will extend as far as the enactment to be amended or repealed with the exception of clauses 23 to 26, clause 102 and Schedule 3 as outlined in subsection (5) which will extend to England and Wales and Scotland only.

Commencement

COMMENTARY ON CLAUSES

Clause 104 : Commencement
329. This clause sets out the commencement dates for the provisions in the Bill. Subsection (1) provides for provisions other than those listed in subsections (2) to (5) to come into force, by order, on a day appointed by Secretary of State.

330. Subsection (2) provides that the following provisions will come into force, by order, on a day appointed by Scottish Ministers:

- Clauses 10 and 11(5) to (7) and (9) relating to documents containing information about green deal plans: Scotland.

- Clauses 13(6) to (8) relating to acknowledgment of green deal plans in respect of property in Scotland.

- Clauses 48 to 60 relating to the private rented sector in Scotland.

- Clause 71 relating to access to the register of energy performance certificates in Scotland.

331. Subsection (3) provides for certain provisions to come into force two months after the Bill receives Royal Assent. These are:-

- clauses 61 to 68 (reducing carbon emissions and home-heating costs);

- clause 69 (smart meters);

- clauses 70 (access to the register of energy performance certificates in England and Wales);

- clauses 72 to 74 (information about energy consumption, efficiency and tariffs);

- clauses 75 to 76 (security of energy supplies);
- clauses 88 to 96 (special administration);
- clause 97 (designations under Continental Shelf Act 1964);
- subsection (3) of clause 98 (offshore transmission and distribution of electricity); and
- clause 99 (agreement about modifying decommissioning programme).

332. Under subsection (4), clause 77 (modification of the Uniform Network Code), the provisions relating to subsections (1) and (2) of clause 98 (offshore transmission and distribution of electricity) and clause 103 (general provisions) will come into force on the day the Bill receives Royal Assent.

333. Subsection (5) provides that Paragraphs 1 to 5, 7, 8(1) and 5(a), and 11 to 13 of Schedule 1 (reducing carbon emissions and home heating costs) will commence two months after Royal Assent. Paragraph 8 (except sub paragraphs (1) and (5)(a) of that paragraph) and paragraph 12 of Schedule 1 will come into force on 1st January 2013. Paragraphs 6, 9 and 10 of Schedule 1 will come into force on 6th April 2014.

334. Subsection (6) provides that an order made by the Secretary of State or the Scottish Ministers under this clause may appoint different days for different purposes and make transitional provisions and savings.

COMMENTARY ON CLAUSES

Clause 105: Short title

335. This clause confirms the title of the Act once Royal Assent of the Bill is achieved.

FINANCIAL EFFECTS

336. The Bill is not expected to have any significant implications for public expenditure. Those provisions with financial ramifications give the Secretary of State enabling powers and include measures introduced to improve energy efficiency in the Private Rented Sector where enforcement costs will be likely in the future.

337. The provisions taken to increase the effectiveness of monitoring of electricity security of supply will see costs arise directly from primary legislation, comprising of one-off costs to Government in this financial year to run a consultation, together with ongoing costs to Ofgem

to collect the required information, conduct analysis and produce reports for the Secretary of State.

338. Finally, measures to facilitate low carbon generation through the additional powers to enable effective implementation of the Offshore Transmission Regime will see small administrative costs to Ofgem and DECC.

339. In relation to the Green Deal, the Government's intention is the regulatory framework introduced by the Bill will ensure that private sector investment is made in accordance with the Government's energy policy objectives to tackle the perceived barriers to investment in energy efficiency.

PUBLIC SECTOR MANPOWER

340. The impact assessments have identified where applicable any impacts on the public sector. As a result of the primary powers being taken there is expected to only be small resource implications. There are no costs imposed on the public sector as a result of the Green Deal primary powers, though they will need to be measured in more detail for the secondary legislation. In particular, for the powers related to the private rented sector, DECC is committed to carrying out a local authority burdens assessment. There are expected to be some one-off development costs for Ofgem and DECC as a result of the electricity security measures and the Special Administration Regime. Small administration savings should be expected for DECC and Local Authorities as a result of the HECA repeal.

SUMMARY OF THE IMPACT ASSESSMENT

341. The Bill is working towards the multiple policy objectives of tackling barriers to investment in energy efficiency, enhancing energy security, and enabling investment in low carbon energy supplies. All of the policy proposals in the Bill have an individual impact assessment, with the exception of the measures to enable the implementation of the enduring offshore electricity transmission regime. This is because the costs and benefits of using these powers have already been assessed in published DECC impact assessments accompanying the on-going consultation. The individual impact assessments for the remainder of the Bill discuss the options, rationale and costs and benefits in detail.

342. The Impact Assessment accompanying the Bill has been signed by the Secretary of State signifying that he has read the Impact Assessment and is satisfied that it represents a fair and reasonable view of the expected costs, benefits and impacts of the policies, and that the benefits justify the costs.

343. The diverse nature of the provisions included in the Bill and the complexities and challenges of meaningfully monetising the different costs and benefits associated with the

multiple objectives of energy policy, mean that it is not possible to present a single cost-benefit figure for the Bill.

344. In many cases, the Bill should reduce the overall costs to business and consumers. In general the costs that directly accrue from the primary powers are very small with all the component parts identified as having a positive, zero or negligible negative impact on business. However, there could be indirect costs associated with the measures, such as the impact of any regulatory changes on the potential demand for the goods or services of businesses. For example, powers to allow the Coal Authority to charge for services regarding subsidence damage repairs and the treatment of contaminated water in non-mining situations on a commercial basis could lead to a small reduction in the demand for services of existing private firms.

345. There could also be potential additional costs to business that result from secondary legislation. The exact extent of these costs will be assessed in future impact assessments, however where known a discussion is attached in the relevant impact assessment for that measure. The most significant potential direct cost on business that may result from secondary legislation will be associated with the Green Deal, and in particular the Energy Company Obligation. There will also be smaller costs associated with additional information on customer bills associated with cheaper tariff information, marketing the Green Deal, and the Green Deal finance mechanism.

346. A full impact assessment is available to Members from the Vote Office and to the public from the Department of Energy and Climate Change website at http://www.decc.gov.uk/en/content/cms/legislation/energy_bill/energy_bill.aspx.

EUROPEAN CONVENTION OF HUMAN RIGHTS

347. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined by section 1 of that Act).

348. Some of the foregoing provisions of the Bill give rise to human rights issues. In summary, some provisions of the Bill give rise for the need to, for example, consider Article 6 (the right to a fair trial), Article 8 (right to respect for family and private life) or Article 1 of Protocol 1 of the European Convention on Human Rights. On each occasion where it has been necessary to consider these Articles the Department has concluded that the provision giving rise to the human rights issue is compatible with the relevant Convention right.

349. In general terms, the Department believes that any interference with Convention rights which is occasioned by some of the Bill's provisions are justified in the public interest. For example, there are several provisions in the Bill which may interfere with a person's right to the peaceful enjoyment of his/her property found in Article 1 Protocol 1: see the private

rented sector provisions, those dealing with the Green Deal and information on cheaper tariffs. Again, in general terms, where an interference does occur it occurs in order to promote the general (public) interest which depending on the context may be tackling climate change through a reduction in carbon emissions, improving local air quality and therefore the health of local residents or maintaining the economic well-being of the UK by securing the security of our energy supplies.

350. In the Department's view all of the provisions of the Bill which give rise to human rights issues strike a fair balance between the qualified rights of the individual whose right is affected and those encompassed within the general interest. Accordingly, the Department is satisfied that the provisions of the Bill are compatible with the European Convention on Human Rights.

351. In light of the above, Lord Marland has made the following statement:

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

COMMENCEMENT DATES

352. Clauses 61 to 70, 72 to 77, 88 to 97, 98(3) and clause 99 will commence two months after Royal Assent. Paragraphs 1 to 5, 7, 8(1) and 5(a), 11 to 13 will also commence two months after Royal Assent.

353. Clauses 77, 98(1) and (2) and 103 to 105 will come into force on the day on which the Bill receives Royal Assent.

354. Paragraph 8 (except sub paragraphs (1) and (5)(a) of that paragraph) and paragraph 12 of Schedule 1 will come into force on 1st January 2013. Paragraphs 6, 9 and 10 of Schedule 1 will come into force on 6th April 2014.

355. All other provisions will be commenced by order on a day appointed by Secretary of State or (where appropriate) the Scottish Ministers. An order may appoint different days for different purposes or make transitional provision and savings.

ANNEX A: GLOSSARY

CERT – Carbon Emissions Reduction Target. The third supplier obligation phase requires larger domestic energy suppliers to make savings in CO_2 emitted by householders by promoting uptake of low carbon energy solutions to consumers.

CESP – Community Energy Saving Programme. Requires gas and electricity suppliers and electricity generators to deliver energy saving measures to domestic consumers in specific low income areas of Great Britain.

DECC – Department of Energy and Climate Change.

ECHR – European Convention on Human Rights.

ECO – Energy Company Obligation. Will replace the existing energy company obligations (CERT and CESP) when they end in 2012

EPC – Energy Performance Certificate. Introduced to help improve the energy efficiency of buildings, providing an 'A' to 'G' energy efficiency rating.

GEMA – the Gas and Electricity Markets Authority. A groups of executive and non-executive members who govern Ofgem, the regulator of the downstream gas and electricity markets. The Authority determines strategy, sets policy priorities and takes decisions on a range of matters, including price controls and enforcement.

Ofgem - Office of the Gas and Electricity Markets. The independent regulator of the downstream gas and electricity markets.

OFT - Office of Fair Trading. UK's consumer and competition authority with an aim to make markets work well for consumers.

OFTO – Offshore transmission owners. There are currently three transmission owners.

UNC – Uniform Network Code. A legal document which forms the basis of the arrangements between companies that transport gas, and those whose gas it transports.

ENERGY BILL [HL]

EXPLANATORY NOTES

These notes refer to the Energy Bill [HL]
as introduced in the House of Lords on 8th December 2010
[HL Bill 33]

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