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STATUTORY INSTRUMENTS

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**2005 No. 2965 (C. 127)**

**ELECTRICITY  
GAS**

**The Energy Act 2004 (Commencement No. 6) Order 2005**

*Made - - - - 17th October 2005*

The Secretary of State makes the following Order in exercise of the powers conferred by section 198(2) of the Energy Act 2004<sup>(1)</sup>:—

**Citation and interpretation**

1.—(1) This Order may be cited as the Energy Act 2004 (Commencement No. 6) Order 2005.

(2) In this Order—

“the Act” means the Energy Act 2004;

“adjustment formula” means a formula under which the price of electricity is adjusted having regard to the current market price of some other commodity;

“affiliate”, in relation to a body corporate that is the owner or operator of a generating station, means a subsidiary or holding company of that body corporate and any subsidiary or holding company of such holding company (and, for the purposes of this definition, “subsidiary” and “holding company” have the meanings ascribed to them in section 736 of the Companies Act 1985<sup>(2)</sup>);

“applicable turnover” means the amounts, ascertained in conformity with normal accounting practice in Great Britain, which are—

- (a) derived by a high electricity user from the provision of goods and services within that person’s ordinary activities; and
  - (b) computed on an accruals basis so that the amounts referred to in paragraph (a) relating to the period for which applicable turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment,
- after deduction of value added tax and any other taxes based on such amounts;

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(1) 2004 c. 20.  
(2) 1985 c. 6.

“connected person”, in relation to an owner or operator of a generating station, means a person connected to him within the meaning of section 839 of the Income and Corporation Taxes Act 1988(3);

“distribution system” and “transmission system” have the meaning that those terms bear in the Electricity Act 1989(4);

“high electricity user” means a body corporate which, for each year since the commencement of a long term, fixed-price contract under which electricity is supplied to it, has spent in excess of twenty per cent of its applicable turnover on electricity, and which receives under that contract at least ninety per cent of all the electricity which it receives;

“long term, fixed-price contract” means a contract entered into before 1st April 2002 which is still in force on the date this Order is made, and which provides for an electricity generator (or a person who is a connected person or an affiliate in relation to an electricity generator) to provide a specified amount (or a specified maximum amount) of electricity to a specified consumer at a price which is specified either numerically or by reference to an adjustment formula; and

“stand-by electricity” means electricity conveyed temporarily, periodically or intermittently to make good any unplanned shortfall in the availability of electricity to the recipient for its own consumption from a generating station owned or operated by the recipient or by a person who is a connected person or an affiliate in relation to the recipient, where such shortfall arises from that generating station being wholly or partly out of commission for a temporary period.

## **Commencement**

2. Section 177 of the Act shall come into force on 1st November 2005.

3.—(1) Except for the purposes mentioned in paragraph (2), section 179 of the Act shall come into force on 1st April 2006.

(2) Section 179 shall come into force on 1st April 2010—

- (a) for the purposes of sections 32 to 32C of the Electricity Act 1989, in respect of any electricity which (without being conveyed to the premises wholly or partly by means of a distribution system) is supplied to premises occupied by a high electricity user from a substation to which it has been conveyed by means of a transmission system; and
- (b) in respect of any electricity which, being stand-by electricity, is supplied (without being conveyed to the premises wholly or partly by means of a distribution system) to premises occupied by a body corporate from a substation to which it has been conveyed by means of a transmission system.

4. Section 197(9) and Part 1 of Schedule 23, in so far as they relate to the repeal of section 28(3) (b) of the Utilities Act 2000(5), shall come into force—

- (a) on 1st April 2006 except for the purposes mentioned in article 3(2); and
- (b) on 1st April 2010 for those purposes.

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(3) 1988 c. 1.  
(4) 1989 c. 29.  
(5) 2000 c. 27.

17th October 2005

*Malcolm Wicks*  
Minister for Energy,  
Department of Trade and Industry

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force the provisions of the Energy Act 2004 as follows—

- (a) section 177 on 1st November 2005;
- (b) section 179, and the associated repeals in section 197(9) and Schedule 23, on 1st April 2006, except for the purposes specified in article 3(2), for which they shall come into force on 1st April 2010.

Section 177 gives powers to the Secretary of State to amend licence conditions enabling the Gas and Electricity Markets Authority to comply with directions issued by the Competition Commission in connection with the funding of licence modification references.

Section 179(1) of the Energy Act 2004 amends the definition of “supply” in section 4 of the Electricity Act 1989 to include supply to premises connected directly to the transmission system. One effect of the change in the definition is to make such supplies subject to the renewables obligation imposed under sections 32, 32A, 32B and 32C of the Electricity Act. This Order provides that this element of the change will not take effect until the 1st April 2010 as regards the supply of electricity to certain high electricity users as defined in the Order.

Article 3(2)(b) of the Order also postpones until 1st April 2010 the application of section 179 to certain supplies of electricity which make good any unplanned shortfall in the availability of electricity from a generating station owned or operated by the recipient.

The remaining provisions will be brought into force by subsequent orders.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Act have been brought into force (or where appropriate will be brought into force) by commencement orders made before the date of this Order—

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
Sections 1, 2, 10, 72, 73, 74 and 75 and Schedules 1 and 15	27th July 2004	<a href="#">2004/1973 (c.87)</a>
Sections 3, 4, 5(1), 6, 9, 13 and 22. Sections 36 and 37 (partially). Sections 133 and 134. Section 135 (partially). Sections 137(1) to (4) and (7), 138, 140(2) to (4), 142 and 144. Sections 190 to 196 (partially). Schedules 3 and 17	24th August 2004	<a href="#">2004/2184 (c.95)</a>
Section 135 in so far as it was not already in force. Sections 136, 137(5) and (6), 141, 143 and 197(8). Section 197(9)	1st September 2004	<a href="#">2004/2184 (c.95)</a>

<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
(partially). Schedules 18 and 19. Schedule 23 (partially)		
Sections 5(2) to (9), 7, 8, 14 to 21 and 23 to 35. Sections 36 and 37, in so far as they were not already in force. Sections 38 to 50, 76 to 88, 94, 101, 102(1) and (4), 103(2) and (4), 104, 115 to 132, 154 to 176, 178, 181 and 183 to 189. Sections 190 to 196, in so far as they were not already in force. Section 191(1) to (7). Section 197(9) and (10) (partially). Schedules 4 to 9, 20 to 22 and Part 1 of Schedule 23 (partially). Schedule 23 Part 2, paragraph 2	5th October 2004	<a href="#">2004/2575 (c.110)</a>
Sections 145(1), (3) and (5) to (7), 146(1) to (5) and (7), 147(1) to (4) and (6) to (8), 148, 149(1), (3), (5) to (9) and (11), 150(1) to (5) and (7) to (10) and 152. Section 197(9) (partially) and Part 1 of Schedule 23 (partially)	1st December 2004	<a href="#">2004/2575 (c.110)</a>
Section 51(1). Section 51(2) (partially). Sections 52(1) and (6), 53(1), (2), (4) and (5) and 63. Section 69(1) (partially). Sections 69(2) and (3) and 71. Section 89 (partially). Section 93. Section 99 (partially). Paragraphs 1 to 5 and 10 to 18 of Schedule 10. Schedules 11 and 13. Paragraphs 1, 2, 4, 6 and 7 of Schedule 14	1st March 2005	<a href="#">2005/442 (c.20)</a>
Sections 11 and 12 and Schedule 2	31st March 2005	<a href="#">2005/442 (c.20)</a>
Section 51(2) (partially). Sections 52(2) to (5) and (7), 53(3), 54 to 62 and 64 to 68. Section 69(1) (partially). Sections 70, 102(5), 103(3), 146(6) and 150(6). Section 197(9) and (10) (partially). Paragraphs 6 to 9 of Schedule 10. Schedule 12. Paragraphs 3, 5 and 8 to	1st April 2005	<a href="#">2005/877 (c.38)</a>

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<i>Provision</i>	<i>Date of Commencement</i>	<i>S.I. No</i>
11 of Schedule 14. Part 1 of Schedule 23 (partially). Paragraphs 1 and 3 of Part 2 of Schedule 23		
Section 99(1) (partially). Section 100	1st September 2005	<a href="#">2005/442 (c.20)</a>
Sections 95 to 98. Section 99(1) (partially). Sections 102(2) and (3) and 105 to 114. Schedule 16 (partially)	1st October 2005	<a href="#">2005/877 (c.38)</a>
Section 103(1). Section 197(9) and Part 1 of Schedule 23 (partially)	1st January 2006	<a href="#">2005/877 (c.38)</a>