

CLIMATE CHANGE AND SUSTAINABLE ENERGY ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Climate Change and Sustainable Energy Act 2006 which was introduced as a Private Member's Bill by Mark Lazarowicz MP and sponsored in the House of Lords by Lord Whitty, and which received Royal Assent on 21st June 2006. They have been prepared by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

SUMMARY

3. Section 1 states that the principal purpose of the Act is to enhance the UK's contribution to combating climate change. It is also aimed at alleviating fuel poverty and securing diverse and long-term energy supplies for the UK. This purpose does not have a substantive effect in its own right, but requires the provisions of the Act to be read in light of it.
4. The Act incorporates a wide variety of measures covering the role of local authorities and parish councils, microgeneration, energy efficiency, Building Regulations, dynamic demand technologies, community energy schemes and renewable heat, and electricity from renewable sources. It also imposes a number of reporting requirements on the Government in relation to greenhouse gas emissions, progress towards our energy efficiency target, progress on implementing the microgeneration strategy and steps taken to promote community energy projects and renewable heat.

Local authorities and parish councils

5. The Act places a duty on local authorities, when exercising their functions, to have regard to a report published by the Secretary of State on ways in which they might improve energy efficiency, increase microgeneration, reduce greenhouse gas emissions and alleviate fuel poverty. It also empowers parish councils in England and community councils in Wales to encourage or promote microgeneration and energy-saving measures and the production and use of biomass and fuels derived from biomass in their area.

Microgeneration

6. Microgeneration is the small-scale production of heat and/or electricity from a low carbon source. The suite of technologies caught by this definition includes solar (photovoltaics (PV) to provide electricity and thermal to heat water), micro-wind, micro-hydro, heat pumps, micro Combined Heat and Power (CHP) and small-scale fuel cells. The technologies can provide heat and electricity to homes, communities and small commercial premises.
7. Under this Act, the Government is required to assess whether microgeneration targets are appropriate and if so designate them, to report on steps taken in meeting the targets and implementing the microgeneration strategy published under the Energy Act 2004, and review the current regime governing planning permission requirements for the installation of microgeneration technologies. The Act also empowers the Secretary of State within a specified period to make modifications to electricity supply and distribution licences requiring the holders of those licences to acquire electricity that their customers generate from microgeneration. The Act also makes changes to the Renewables Obligation to allow the Government to bring forward secondary legislation that will make it easier for microgenerators to access Renewable Obligation Certificates.

Energy Efficiency

8. The Act requires the Government to report on progress made in achieving the energy efficiency target that is in the Housing Act 2004.
9. Under the Gas Act 1986 and Electricity Act 1989, the Secretary of State may impose an obligation on gas transporters and suppliers, and electricity distributors and suppliers, to achieve energy efficiency targets. The Act alters this to enable the Secretary of State instead to impose an obligation on these companies to achieve carbon emissions reduction targets.

Building Regulations

10. The Act allows the Secretary of State to make building regulations in relation to microgeneration. It also extends the time limits within which summary proceedings for breach of building regulations relating to the conservation of fuel and power can be commenced. In addition there is a new duty on the Secretary of State to report to Parliament on measures taken to secure greater compliance with these building Regulations.

Dynamic Demand Technologies

11. The Act requires the Secretary of State to publish a report into the potential for dynamic demand technologies to reduce greenhouse gas emissions.

Community Energy Schemes and Renewable Heat

12. The Act gives the Secretary of State duties to promote community energy projects and also the use of heat from renewable sources (renewable heat), and to report on steps taken for the purpose of promoting those matters.

COMMENTARY ON SECTIONS

Reports on greenhouse gas emissions

13. **Section 2** gives the Secretary of State a duty to report annually on the level of greenhouse gas emissions in the UK and the steps that have been taken by government departments during the previous year to reduce those emissions. The Government already provides information on levels of greenhouse gas emissions under EU and UN reporting obligations, and also includes this information in their annual reports, required by the Sustainable Energy Act 2003, on progress towards our sustainable energy goals. This section, however, makes it a legal requirement to provide this information to Parliament along with information on steps taken to reduce greenhouse gas emissions.

Local authorities

14. **Section 3** places a duty on the Secretary of State to publish a report on ways in which local authorities might improve energy efficiency, increase microgeneration, reduce greenhouse gas emissions and alleviate fuel poverty. Local authorities would then have to have regard to the report in exercising their functions.

Microgeneration

15. **Section 4** deals with national targets for microgeneration. It gives the Secretary of State a duty, if on 1 November 2008 he thinks it appropriate, to designate national microgeneration targets. It also then requires him to take steps to ensure those targets are met. If the Secretary of State decides that a target is not appropriate, he must publish the reasons for reaching this decision.
16. For Scotland, the Secretary of State will only be able to set targets for electricity generating microgeneration stations. This is because the generation of heat for the purpose of heating is a devolved matter, so it would be inappropriate for the Secretary of State to set a target in this area.
17. In arriving at a decision on whether targets need to be set, the Secretary of State has to consider:
- The number of microgeneration systems installed
 - The Government's Microgeneration Strategy
 - Research into the effect on the number of microgeneration installations that setting targets might have.
18. **Section 5** only applies if a target is set under Section 4, and requires the Secretary of State to include appropriate information about things done in order to achieve any microgeneration target set in the annual reports, required by the Sustainable Energy Act 2003, on progress towards our sustainable energy goals
19. **Section 6** requires the Secretary of State to include information on what has been done to implement the Government's microgeneration strategy in the annual reports towards our sustainable energy goals mentioned in paragraph 17. The microgeneration strategy was published in March 2006 and can be found at <http://www.dti.gov.uk/energy/sources/sustainable/microgeneration/strategy/page27594.html>.

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20. **Section 7** allows the Secretary of State to amend electricity distribution and supply licences to ensure that suppliers offer to acquire any excess electricity exported to the distribution network by their customers from microgeneration units. Suppliers would still be free – as they are now – to acquire exported electricity from any generator.
21. **Section 8** provides that the powers in question are exercisable only between 12 and 36 months from commencement of the section.
22. **Section 9** amends section 47 of the Electricity Act 1989 to require the Gas and Electricity Markets Authority (OFGEM) to keep under review the carrying on of activities connected with the generation of electricity by microgeneration and its transmission and supply and to collect information with respect to those activities and the persons by whom they are carried on. The Authority is required to perform this duty from time to time so far as it is felt practicable. Section 47 already gives OFGEM a duty to keep under review certain activities in the electricity sector. By adding a specific reference to microgeneration, the section clearly indicates the importance of OFGEM keeping microgeneration under review along with other matters in the electricity sector.
23. **Section 10** requires the Secretary of State to review existing permitted development orders (that is, orders under the Town and Country Planning Act 1990 which deem planning consent to have been granted in respect of certain development) for the purpose of deciding what provision, or further provision, is necessary to facilitate the installation of microgeneration equipment. It also requires a report to Parliament on the outcome of the review and commits the Secretary of State to making the recommended changes to permitted development orders as soon as reasonably practicable after the report is laid.
24. **Section 11** gives the Secretary of State the power to make building regulations in respect of microgeneration.

Energy Efficiency

25. **Section 12** amends section 1 of the Sustainable Energy Act 2003 ('Annual reports on progress made towards sustainable energy aims') to add an obligation on the Secretary of State to report annually on progress towards a target set out in section 217(1) of the Housing Act 2004. The target is to "take reasonable steps to ensure that by 2010 the general level of energy efficiency of residential accommodation in England has increased by at least 20 per cent compared with the general level of such energy efficiency in 2000".

Building regulations relating to emissions and use of fuel and power

26. **Section 13** adds a new section to the Building Act 1984 (section 35A) which extends the current time limit of 6 months (as provided in section 127(1) of the Magistrates' Courts Act 1980) within which summary proceedings for breach of building regulations relating to the conservation of fuel and power (that is the provisions in what is currently Part L of the building regulations) and relating to the reduction of greenhouse gases can be commenced. The current time limit of 6 months starts to run from the date the offence is committed. This means that within that 6 month period any potential breach has to come to the attention of the authorities, be investigated and, if there is sufficient evidence, summary proceedings have to be commenced. Under new section 35A there is an absolute time limit of two years from the date the offence is committed to bring summary proceedings. However, as soon as there is sufficient evidence of a breach, summary proceedings must be commenced within 6 months.

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27. Section 35A (1) allows an information to be laid before the magistrates within a period of 6 months from the “relevant date” (defined in subsection (4)) provided that proceedings are begun within 2 years of the day the offence was committed.
28. Section 35A (2) enables the Secretary of State to designate by regulation the provisions of the building regulations to which the time limits in subsection (1) will apply.
29. Section 35A (3) defines the scope of the provisions which can be designated under subsection (2).
30. Section 35A (4) defines the relevant date for purposes of subsection (1)(b) as being the date on which sufficient evidence to justify proceedings comes to the knowledge of the person commencing proceedings.
31. Section 35A (5) sets out the procedure for a local authority prosecutor to certify the date when knowledge of evidence sufficient to commence proceedings came to his knowledge and provides that the certificate is to be conclusive evidence of that date.
32. Section 35A (6) ensures that the extended time limits provided for in subsection (1) do not apply to an offence that is committed before it is designated as a relevant offence under subsection (2).
33. Subsection (2) makes consequential amendment to ensure that the time limit in section 53(6) of the Building Act is consistent with that in section 35A (1). Section 53(6) operates in the circumstances where an approved inspector discovers a breach of the regulations in the course of his duties in relation to an initial notice (as provided for in section 47 of the Building Act). Where an approved inspector discovers such a breach he will (as he has no enforcement powers) normally hand over his function to the local authority who have 6 months from the date the function is handed over to commence summary proceedings. Therefore, subsection (2), in relation to the breaches of the building regulations provided for in new section 35A, brings the time limit in section 53(6) into line with that provided for in new section 35A.
34. **Section 14** imposes upon the Secretary of State a duty to report to Parliament, within 6 months of the section’s coming into force, on measures taken to secure a greater incidence of compliance with building regulations relating to the conservation of fuel and power and the reduction of greenhouse gas emissions. The Secretary of State may from time to time lay subsequent reports

Carbon emissions reduction targets

35. Section 33BC of the Gas Act 1986 and Section 41A of the Electricity Act 1989 enable the Secretary of State, by order, to impose on each gas transporter and supplier, and each electricity distributor and supplier, an obligation to achieve energy efficiency targets (otherwise known as the Energy Efficiency Commitment). This is defined as a target for the promotion of improvements in energy efficiency.

36. **Sections 15 and 16** alter these sections to enable the Secretary of State instead to impose on each gas transporter and supplier, and each electricity distributor and supplier, an obligation to achieve carbon emissions reduction targets. A carbon emissions reduction target is defined as a target for the promotion of measures for improving energy efficiency and, if provided by order: measures for increasing the amount of electricity generated, or heat produced, by microgeneration; any other measures specified in the order for increasing the amount of electricity generated or heat produced using low-emissions sources or technologies; and measures for reducing the consumption of energy. The new provisions will provide additional flexibility in the range of measures that can be employed to achieve a carbon emission reduction target.

Dynamic demand technologies

37. **Section 18** requires the Secretary of State to publish a report on the contribution that dynamic demand technologies could make to reducing greenhouse gas emissions in Britain. The report will also look at whether it would be appropriate to take steps to promote these technologies and will state the view of the Secretary of State as to whether it would be appropriate to take steps to promote these technologies .
38. Dynamic demand technologies are technologies that enable the consumption or generation of electricity to be controlled or adjusted automatically according to network frequencies. If they sense, through an assessment of the frequency levels, that demand is growing, then they will, for instance, turn the fridge down. The aim is to help energy efficiency as well as security of supply at peak periods by managing the demand/supply relationship at peak times. The overall benefit of these technologies is that a smoothed demand pattern leads to a reduced need for back-up generation.

Community energy and renewable heat

39. **Section 19** places a duty on the Secretary of State to promote community energy projects. These are defined by reference to the use or installation of microgeneration technologies in premises that are essentially used for non-commercial purposes and which, if used for residential purposes, contain at least five dwellings. The section stipulates that when carrying out his duty, the Secretary of State shall have regard to the desirability of promoting schemes aimed at encouraging such projects, investment by others in such projects and the provision of advice and information to people wishing to set up projects.
40. **Section 20** empowers parish councils in England and community councils in Wales to encourage or promote in their area the energy-saving measures listed in subsection (1). There is a power in subsection (6) for the Secretary of State and the National Assembly for Wales to amend this list in relation to England and Wales, respectively.
41. The general power to encourage or promote energy-saving measures includes a power for parish councils and community councils to provide information, advice and assistance, including financial assistance. By virtue of subsection (3)(a), conditions may be imposed on any assistance given. Any expenditure under section 20 is to be treated as if incurred under section 137 of the Local Government Act 1972. This means that it will count towards the limit placed on expenditure under section 137(4).
42. **Section 21** imposes upon the Secretary of State a duty to take such steps as he considers appropriate to promote the use of heat produced from renewable sources.

43. **Section 22** imposes a requirement on the Secretary of State to report in the annual report under the Sustainable Energy Act 2003 on steps taken to promote renewable heat and community energy under sections 19 and 21.

Electricity from renewable sources

44. The Renewables Obligation (RO) is an obligation, administered by OFGEM, on licensed electricity suppliers to provide a specified and annually increasing proportion of their sales from renewable sources. Generators can claim 1 Renewable Obligation Certificate (ROC) for every 1 MW of eligible renewable electricity generated. Suppliers can meet their obligation by presenting ROCs or by paying into the “buy-out fund” or a combination of the two. At the end of an obligation period the buyout fund is recycled pro rata to all suppliers who presented ROCs.
45. Under the Renewables Obligation Order as currently drafted, specific arrangements apply for microgenerators (those with a capacity of 50kW or less). In order to be issued with ROCs the microgenerator must first gain accreditation from OFGEM by completing a questionnaire, although ROCs will be issued for data that has been submitted prior to accreditation being obtained. In order to receive ROCs on an ongoing basis, generators must submit output information to OFGEM. Microgenerators have the option to submit their data on either a monthly or annual basis. ROCs are awarded on the basis of electricity generated. 500kWh – 1499 kWh earns 1 ROC, 1500kWh – 2499kWh earns 2 ROCs, and so on. These ROCs can then be sold to electricity supply companies to help them meet their obligation.
46. **Section 23** inserts new provisions into section 32B of the Electricity Act 1989 to provide a power to make an order allowing generators to claim renewable obligation certificates (ROCs) for the electricity they have generated, without the need to have a ‘sale and buyback’ agreement with the supplier. The provision will also enable the order to permit generators to claim ROCs in circumstances where electricity is provided to a distribution or transmission system in circumstances where its supply cannot be demonstrated. This might be the case, for example, where surplus electricity produced by a household that generates electricity for its own use is exported to the electricity network.
47. **Section 23** also provides a power to amend the Renewables Obligation Order to allow ROCs to be issued to agents who are acting on a generator’s behalf. Agents could act on behalf of one or more generators, and may also combine output to claim ROCs. This will reduce the administrative burden on generators with the aim of making it easier for generators who produce small amounts of electricity to obtain ROCs.
48. **Section 24** makes supplementary amendments to section 32 and 32A of the Electricity Act 1989. The section also enables the Department to consult on the provisions of a new Renewables Obligation Order before the provisions in sections 23 and 24 have been commenced. It also provides that the Scottish Ministers cannot exercise the functions conferred on the Secretary of State by these provisions unless an Order in Council has been made (under section 63 of the Scotland Act 1998).
49. **Section 25** amends section 185 of the Energy Act 2004. This section gives the Secretary of State the power to adjust transmission charges for renewable generators in an area of GB with high potential for renewable development, where that development would be deterred by the high level of transmission charges that would otherwise apply.

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50. The amendment to section 185 of the Energy Act will extend the potential life of any scheme from 10 years from the commencement of the Energy Act provision, to a time not later than 4 October 2024 (i.e. 20 years from commencement of the Energy Act provision), clarify that such a scheme may apply to two or more separate areas should the conditions of section 185 apply to those separate areas, and allow for the consultation requirement in section 185(7) of the Energy Act 2004 to be satisfied by consultation taking place before the commencement of this section.

COMMENCEMENT DATE

51. Sections 1, 3 to 5, 7 to 11, 13, 14, 18 to 21 and 23 to 25 come into force on 21 August 2006.
52. Sections 2, 6, 12 and 22 come into force on 1st January 2007.
53. Sections 15 to 17 come into force in accordance with provision made by the Secretary of State by order.

PASSAGE THROUGH PARLIAMENT

Stage	Date	Hansard Reference
<i>House of Commons</i>		
Introduction	22 June 2005	Vol. 435 Col 815
Second Reading	11 November 2005	Vol. 439 Cols. 583-647
Money Resolution	13 December 2005	Vol. 440 Col 1274
Committee	25 January and 9 February 2006	Standing Committee C
Report	10 March 2006	Vol. 443 Cols. 1047-1121
Report / Third Reading	17 March 2006	Vol. 443 Cols. 1705-79
<i>House of Lords</i>		
Introduction	12 May 2006	Vol. 681 Col 1296
Second Reading	25 May 2006	Vol. 682 Cols. 1006-1032
Committee (discharged)	14 June 2006	Vol. 683 Col 226
Third Reading	20 June 2006	Vol. 683 Col 634

Royal Assent – 21 June 2006

House of Lords Hansard Vol. 683 Col 871

House of Commons Hansard Vol. 447 Col 1408

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