

ENERGY ACT 2010

EXPLANATORY NOTES

PART 4: FINAL PROVISIONS

COMMENTARY ON SECTIONS

Section 30: General duties of the Authority and the Secretary of State

139. This section provides that in exercising any functions conferred by or under Part 2 or 3 of the Act, the Secretary of State and Ofgem are bound by the principal objective and general duties set out in Part 1 of the Electricity Act 1989 and Gas Act 1986 (as amended by sections 16 and 17).

Section 31: Orders and regulations

140. This section sets out the procedure for the Secretary of State to make orders and regulations under this Act. Regulations made under Part 1 (carbon capture and storage provisions), section 9 (schemes for reducing fuel poverty), section 15 (schemes for reducing fuel poverty: interpretation) or section 26 (adjustment of charges to help disadvantaged groups of customers) must be approved by both Houses of Parliament (subsection (2)).
141. Regulations made solely under section 6 (carbon capture and storage provisions: the administrator) and which do not contain provisions to amend an Act, regulations made under section 11 (reconciliation mechanism: regulations) and orders made under section 23 (expiry of power), section 28(5) (regulations adjusting energy charges: supplementary) or section 29(2) (adjustment of energy charges: interpretation) may be annulled by a resolution of either House of Parliament (subsections (3) and (4)).
142. Orders or regulations made under the provisions in this Act may include incidental, supplementary, consequential, transitory or transitional provision or savings (subsection (5)).
143. Regulations made under Part 1 (carbon capture and storage) or 2 (schemes for reducing fuel poverty) may impose obligations or confer functions on a person including the Secretary of State (subsection (6)). Regulations under Part 1 may amend Acts and Acts of the Scottish Parliament (subsection (7)).
144. The Secretary of State must obtain the consent of Scottish Ministers before making regulations under Part 1 which contain provisions that would be within the legislative competence of the Scottish Parliament if contained within an Act of that Parliament (subsection (8)).

Section 32: Modifications of licences etc: Parliamentary procedure

145. This section sets out the procedure that the Secretary of State must comply with in order to exercise the licence modification powers conferred by sections 18(1) or 25(1). Subsections (1) and (2) provide that before making modifications, the Secretary of State must lay a draft before Parliament and allow a period of 40 days for either House of

Parliament to reject the draft. Subsections (5) and (6) specify how the 40-day period is to be calculated.

146. Subsection (2) means that if either House of Parliament resolves not to approve the draft then the Secretary of State cannot introduce the licence modification as drafted. In this situation, subsection (4) allows the Secretary of State to lay a new draft of the licence modifications before Parliament. Subsection (3) means that unless Parliament resolves not to approve the draft the Secretary of State will be free to make the modifications as drafted.

Section 33: Licence modifications etc

147. This section contains additional provision about the modification of licences under the powers in the Energy Act. In relation to the power to make modifications conferred by section 12(1), section 18(1) or section 25(1), subsections (3) and (4) allow flexibility for the Secretary of State to exercise the power either generally, in relation solely to specified cases or subject to exceptions. Where the Secretary of State modifies a standard licence condition, Ofgem must incorporate the same modification in the standard conditions of licences subsequently granted and publish the modification (subsection (7)). Subsection (6) provides that the modification of part of a standard licence condition does prevent any other part of condition being regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 and Electricity Act 1989.
148. The Secretary of State must publish the details of any modifications made as soon as reasonably practicable (subsection (5)). This requirement also applies in relation to modifications under section 23(7) (subsection (2)).

Section 35: Consequential amendments

149. This section introduces the Schedule which contains consequential amendments to the Gas Act 1986, the Electricity Act 1989 and the Utilities Act 2000.

Section 38: Commencement

150. This section sets out the commencement dates for the provisions in the Act. Under subsection (3) all provisions will come into force two months after the Act receives Royal Assent, with the exception of provisions relating to the exploitation of electricity trading and transmission arrangements which will be commenced by order (subsection (2)) and Part 4 (Final provisions), (other than section 35 and the Schedule so far as they relate to the provisions about exploitation of electricity trading and transmission arrangements), which will come into force on the day the Act receives Royal Assent (subsection (1)).