

*These notes refer to the Energy Act 2011 (c.16)  
which received Royal Assent on 18 October 2011*

# ENERGY ACT 2011

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2: Security of Energy Supplies**

#### *Chapter 5: Special Administration*

#### **Special administration under this Chapter**

#### *Section 96: Application of certain provisions of the Energy Act 2004 in relation to esc administration orders*

273. This section 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 energy supply company (esc) administration order.
274. 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 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 Schedule 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 Act) as the Secretary of State considers appropriate in relation to energy supply company administration;

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- 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 administrator with the approval of the Secretary of State, after he has consulted GEMA;
- Sections 160 to 164 which prevent energy supply company 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 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 requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable; and
- Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.