

Energy Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Business, Energy and Industrial Strategy, have been ordered to be published as HL Bill 39—EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Lord Callanan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

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

ENVIRONMENTAL STATEMENTS

Lord Callanan has made the following statements under section 20(2)(a) and (3) of the Environment Act 2021.

In my view—

- (a) the Energy Bill contains provision which, if enacted, would be environmental law, and
- (b) the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.

Energy Bill [HL]

[AS INTRODUCED]

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[AS INTRODUCED]

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Make provision about energy production and security and the regulation of the energy market, including provision about the licensing of carbon dioxide transport and storage; about commercial arrangements for industrial carbon capture and storage and for hydrogen production; about new technology, including low-carbon heat schemes and hydrogen grid trials; about the Independent System Operator and Planner; about gas and electricity industry codes; about heat networks; about energy smart appliances and load control; about the energy performance of premises; about the resilience of the core fuel sector; about offshore energy production, including environmental protection, licensing and decommissioning; about the civil nuclear sector, including the Civil Nuclear Constabulary; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

LICENSING OF CARBON DIOXIDE TRANSPORT AND STORAGE

CHAPTER 1

LICENSING OF ACTIVITIES

General functions

5

1 Principal objectives and general duties of Secretary of State and economic regulator

- (1) The principal objectives of the Secretary of State and the Gas and Electricity Markets Authority in carrying out their respective functions under this Part are to—
- (a) protect the interests of current and future transport and storage network users;

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- (b) protect the interests of any consumers whose interests the Secretary of State or the economic regulator (as the case may be) considers may be impacted by the exercise of their respective functions under this Part;
 - (c) promote the efficient and economic development and operation of transport and storage networks, having regard to the need for licence holders to be able to finance their licensable activities. 5
- (2) In this Part the Gas and Electricity Markets Authority is referred to as the “economic regulator”.
- (3) The Secretary of State and the economic regulator must carry out their respective functions under this Part in the manner which the Secretary of State or the economic regulator (as the case may be) considers is best calculated to further the principal objectives, wherever appropriate by – 10
- (a) promoting effective competition between persons engaged in, or in commercial activities connected with, the activities mentioned in section 2(2); 15
 - (b) promoting the resilience of transport and storage networks;
 - (c) protecting the public from dangers arising from the construction, operation and decommissioning of infrastructure used for the purposes of activities mentioned in section 2(2). 20
- (4) In carrying out functions under this Part in accordance with the preceding provisions of this section, the Secretary of State or the economic regulator (as the case may be) must have regard to –
- (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and any other principles appearing to the Secretary of State or the economic regulator to represent the best regulatory practice; 25
 - (b) the need to contribute to the achievement of sustainable development.
- (5) In carrying out functions under this Part in accordance with the preceding provisions of this section the Secretary of State must have regard to the Secretary of State’s duties under sections 1 and 4(1)(b) of the Climate Change Act 2008 (carbon targets and budgets). 30
- (6) In carrying out functions under this Part in accordance with the preceding provisions of this section, the economic regulator must have regard to – 35
- (a) the need to assist the Secretary of State’s compliance with the duties mentioned in subsection (5);
 - (b) the targets specified in subsection (8).
- (7) In exercising their respective functions in relation to licensable activities, the Secretary of State and the economic regulator may have regard to the desirability of the efficient and effective operation of the energy system (or any part of it) in the United Kingdom or any part of the United Kingdom. 40
- (8) The targets referred to in subsection (6)(b) are –

- (a) the net-zero emissions target, as defined in section A1(1) of the Climate Change (Scotland) Act 2009 (asp 12);
 - (b) a target in, or set under, section 1 or 2 of the Climate Change Act (Northern Ireland) 2022;
 - (c) a target in, or set under, section 29 or 30 of the Environment (Wales) Act 2016 (anaw 3). 5
- (9) In this section –
- “transport and storage network user” means a person who is, or seeks to be, a party to arrangements for carbon dioxide to be transported to a relevant site for the purpose of disposal by way of geological storage; 10
 - “transport and storage networks” means infrastructure and facilities for –
 - (a) the disposal of carbon dioxide by way of geological storage (or injection for the purposes of geological storage) at a relevant site, or 15
 - (b) the transportation of carbon dioxide to a relevant site for the purpose of such disposal;
 - “relevant site” means a site that is –
 - (a) in the United Kingdom, or
 - (b) in, under or over – 20
 - (i) the territorial sea adjacent to the United Kingdom, or
 - (ii) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).
- (10) For the purposes of this Part activities are “licensable activities” if undertaking them without the authority of a licence or exemption constitutes an offence under section 2(1). 25

Licensable activities

2 Prohibition on unlicensed activities

- (1) It is an offence for a person to carry on an activity within subsection (2) unless the person is authorised to do so by a licence. 30
- (2) The activities are –
- (a) operating a site for the disposal of carbon dioxide by way of geological storage;
 - (b) providing a service of transporting carbon dioxide by a licensable means of transportation. 35
- (3) In this Part “licensable means of transportation” means –
- (a) a pipe or system of pipes, or
 - (b) any other means of transportation that may be specified by regulations made by the Secretary of State,
- which falls within subsection (4). 40

- (4) A means of transportation falls within this subsection if it is used (with or without other means of transportation) for transporting carbon dioxide all or part of the way to a site for the geological storage of carbon dioxide.
- (5) A person who commits an offence under this section is liable—
- (a) on summary conviction in England and Wales, to a fine; 5
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to a fine.
- (6) No proceedings may be instituted in England and Wales in respect of an offence under this section except by or on behalf of the Secretary of State or the economic regulator. 10
- (7) Regulations under subsection (3)(b) may make consequential, transitional, incidental or supplementary provision including—
- (a) amendments (or repeals) in any provision of this Act or any other enactment, and 15
 - (b) provision modifying any standard conditions of licences or provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of activities which are to become licensable activities.
- (8) Regulations under subsection (3)(b) are subject to the affirmative procedure. 20
- (9) For the purposes of this Part the person who “operates” a site for the geological storage of carbon dioxide is the person who carries on or (where different) controls activities at the site.
- 3 Consultation on proposals for additional activities to become licensable**
- (1) Before making regulations under section 2(3)(b), the Secretary of State must give notice— 25
- (a) stating that the Secretary of State proposes to make regulations providing for the means of transportation in question to become a licensable means of transportation, and
 - (b) specifying a reasonable period (of not less than 28 days from the date of publication of the notice) within which representations or objections may be made with respect to the proposal, 30
- and must consider any representations or objections duly made and not withdrawn.
- (2) The notice must be given— 35
- (a) by sending a copy of the notice to the economic regulator, the appropriate devolved authorities and any other body the Secretary of State considers appropriate, and
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by such regulations. 40

- (3) For the purposes of this section the “appropriate devolved authorities” are—
- (a) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 5
 - (b) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that— 10
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998. 15

4 Territorial scope of prohibition

- Section 2(1) applies to activities in, above or below — 20
- (a) the territorial sea adjacent to the United Kingdom, or
 - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008),
- as it applies to activities in the United Kingdom.

5 Exemption from prohibition 25

- (1) The Secretary of State may by regulations grant exemption from the prohibition under section 2(1).
- (2) An exemption may be granted—
- (a) to a specified person, or persons of a specified class;
 - (b) generally or to such extent as may be specified; 30
 - (c) unconditionally or subject to such conditions as may be specified.
- (3) Before making regulations under subsection (1) the Secretary of State must give notice—
- (a) stating that the Secretary of State proposes to make such regulations and setting out the terms of the proposed regulations; 35
 - (b) stating the reasons why the Secretary of State proposes to make the regulations in the terms proposed, and
 - (c) specifying the time (which must be not less than 28 days from the date of publication of the notice) within which representations with respect to the proposals may be made, 40

and must consider any representations which are duly made in respect of the proposals and not withdrawn.

- (4) The notice required by subsection (3) must be given—
- (a) by serving a copy of it on the economic regulator and any appropriate devolved authority, and 5
 - (b) by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the proposed regulations.
- (5) Notice of an exemption granted to a person is to be given—
- (a) by serving a copy of the exemption on the person, and 10
 - (b) by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of other persons who may be affected by it.
- (6) Notice of an exemption granted to persons of a class must be given by publishing the exemption in such manner as the Secretary of State considers appropriate for bringing it to the attention of— 15
- (a) persons of that class, and
 - (b) other persons who may be affected by it.
- (7) An exemption may be granted—
- (a) indefinitely, or 20
 - (b) for a period specified in, or determined by or under, the exemption.
- (8) Conditions subject to which an exemption is granted may (in particular) require any person carrying on any activity in pursuance of the exemption—
- (a) to comply with any direction given by a relevant authority as to such matters as are specified in the exemption or are of a description so specified; 25
 - (b) to do (or not do) such things as are specified in the exemption or are of a description so specified, except so far as the Secretary of State or a relevant authority consents to the person’s not doing (or doing) them, and 30
 - (c) to refer for determination by the Secretary of State or a relevant authority such questions arising under the exemption as are specified in the exemption or are of a description so specified.
- (9) For the purposes of this section the “appropriate devolved authorities” are—
- (a) the Scottish Ministers, if the regulations under subsection (1) contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 35
 - (b) the Welsh Ministers, if those regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 40

- (c) the Department for the Economy in Northern Ireland, if those regulations contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 5
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (10) In subsection (8) “relevant authority” means a person specified in the conditions. 10

6 Revocation or withdrawal of exemption

- (1) The Secretary of State may by regulations revoke regulations by which an exemption was granted to a person or vary regulations by which more than one exemption was so granted so as to terminate any of the exemptions— 15
 - (a) at the person’s request;
 - (b) in accordance with any provision of the regulations by which the exemption was granted, or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect. 20
- (2) The Secretary of State may by regulations revoke regulations by which an exemption was granted to persons of a class or vary regulations by which more than one exemption was so granted so as to terminate any of the exemptions—
 - (a) in accordance with any provision of the regulations by which the exemption was granted, or 25
 - (b) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect.
- (3) The Secretary of State may by regulations withdraw an exemption granted to persons of a class from any person of that class— 30
 - (a) at the person’s request;
 - (b) in accordance with any provision of the regulations by which the exemption was granted, or
 - (c) if it appears to the Secretary of State inappropriate that the exemption should continue to have effect in the case of the person. 35
- (4) Before making regulations under subsection (1)(b) or (c), (2) or (3)(b) or (c), the Secretary of State must give notice of the proposal to do so (with reasons) and of a period within which representations may be made to the Secretary of State.
- (5) The notice under subsection (4) must be given— 40
 - (a) to the economic regulator and any appropriate devolved authority;

- (b) where the Secretary of State is proposing to make regulations under subsection (1)(b) or (c), by serving a copy of it on the person to whom the exemption was granted;
 - (c) where the Secretary of State is proposing to make regulations under subsection (2), by publishing it in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons of the class of persons to whom the exemption was granted, and 5
 - (d) where the Secretary of State is proposing to make regulations under subsection (3)(b) or (c), by serving a copy of it on the person from whom the Secretary of State proposes to withdraw the exemption. 10
- (6) For the purposes of subsection (5) the “appropriate devolved authorities” are—
- (a) the Scottish Ministers, if the regulations to which the notice relates contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 15
 - (b) the Welsh Ministers, if those regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 20
 - (c) the Department for the Economy in Northern Ireland, if those regulations contain provision that—
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 25
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998. 30
- (7) Regulations under this section and section 5 are subject to the negative procedure.

Grant and conditions of licences

7 Power to grant licences

- (1) The economic regulator may grant a licence authorising a person to carry on— 35
 - (a) activities falling within section 2(2)(a);
 - (b) activities falling within section 2(2)(b).
- (2) A licence—
 - (a) must be in writing; 40

- (b) is to continue in force for such period as may be specified in or determined by or under the licence, unless previously revoked in accordance with any term of the licence.

8 Power to create licence types

- (1) The Secretary of State may by regulations provide that different types of licence may be granted under section 7(1) in respect of different descriptions of activity falling within section 2(2). 5
- (2) Regulations under this section may make consequential, transitional, incidental or supplementary provision including –
 - (a) amendments (or repeals) in any provision of this Act or any other enactment, and 10
 - (b) provision modifying any standard conditions of licences or provision determining the conditions which are to be standard conditions for the purposes of new types of licences.
- (3) Regulations under this section are subject to the affirmative procedure. 15

9 Procedure for licence applications

- (1) The Secretary of State, or the economic regulator with the approval of the Secretary of State, may by regulations –
 - (a) make provision about the form and manner in which an application for a licence must be made; 20
 - (b) authorise the grantor to require that an application is accompanied by a fee for processing the application of an amount determined in accordance with the regulations.
- (2) The Secretary of State may by regulations make provision about the procedure for applications for a licence (in addition to any provision that may be made under subsection (1)) including, for example, provision –
 - (a) requiring that a decision to refuse a licence must be accompanied by reasons for the decision; 25
 - (b) imposing requirements with regard to the publication of decisions to refuse a licence. 30
- (3) Before making regulations under subsection (2) the Secretary of State must consult the economic regulator and the appropriate devolved authorities.
- (4) Before granting a licence the economic regulator must give notice –
 - (a) stating that the economic regulator proposes to grant the licence,
 - (b) stating the reasons why the economic regulator proposes to grant the licence, and 35
 - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed licence may be made,

and must consider any representations or objections which are duly made and not withdrawn.

- (5) A notice under subsection (4) must be given by publishing the notice in such manner as the economic regulator considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence. 5
- (6) The Secretary of State may by regulations make provision, in relation to licences, about the matters to be taken into account in determining whether an applicant for a licence should be granted the licence.
- (7) Regulations under this section are subject to the negative procedure.
- (8) Consultation before the passing of this Act is as effective for the purposes of subsections (3) and (4) as consultation after that time. 10
- (9) In this Part “grantor”, in relation to a licence or an application for a licence, means the person who grants or, as the case may be, has power to grant, the licence.
- (10) For the purposes of subsection (3) the “appropriate devolved authorities” are— 15
- (a) the Welsh Ministers, if the Secretary of State proposes to include in the regulations provision within the legislative competence of Senedd Cymru;
 - (b) the Scottish Ministers, if the Secretary of State proposes to include in the regulations provision within the legislative competence of the Scottish Parliament; 20
 - (c) the Department for the Economy in Northern Ireland, if the Secretary of State proposes to include in the regulations provision within the legislative competence of the Northern Ireland Assembly. 25
- (11) The Statutory Instruments Act 1946 applies in relation to the power of the economic regulator to make regulations under subsection (1) as if the economic regulator were a Minister of the Crown.
- (12) Any sums received by the economic regulator or the Secretary of State by virtue of this section must be paid into the Consolidated Fund. 30

10 Competitive tenders for licences

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate for facilitating the making, in prescribed cases, of a determination on a competitive basis of the person to whom a licence is to be granted. 35
- (2) That provision may include—
- (a) provision, in prescribed cases, for the publication of a proposal to grant a licence;
 - (b) provision for the inclusion in such a proposal of an invitation to apply for a licence; 40

- (c) provision restricting the making of applications for a licence and imposing requirements as to the period within which they must be made;
 - (d) provision for regulating the manner in which applications are considered and determined; 5
 - (e) provision authorising the Secretary of State to direct, in relation to a particular competition, that specified functions which would, apart from the direction, be exercisable by the economic regulator are, so far as they relate to that competition, to be exercised instead by a specified person. 10
- (3) Before making regulations under subsection (1) the Secretary of State must consult the economic regulator and the appropriate devolved authorities.
- (4) Regulations under subsection (1) –
 - (a) may make provision by reference to a determination by the economic regulator or to the opinion of the economic regulator as to any matter; 15
 - (b) may dispense with or supplement provision made in relation to applications for licences under section 9.
- (5) Regulations under subsection (1) are subject to the affirmative procedure.
- (6) For the purposes of subsection (3) the “appropriate devolved authorities” are – 20
 - (a) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 25
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that – 30
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998. 35
- (7) In this section –
 - “competition” means a determination such as is mentioned in subsection (1); 40
 - “prescribed” means prescribed in, or determined under, regulations under subsection (1);
 - “specified”, in relation to a direction under subsection (2)(e), means specified in the direction.

11 Conditions of licences: general

- (1) A licence may include –
- (a) such conditions (whether or not relating to the activities authorised by the licence) as appear to the grantor to be requisite or expedient having regard to the duties imposed by section 1 (principal objectives of Secretary of State and economic regulator), and 5
 - (b) conditions requiring the making to the economic regulator of a payment on the grant of the licence, or payments during the currency of the licence, or both, of such amount or amounts as may be determined by or under the licence. 10
- (2) Without prejudice to the generality of paragraph (a) of subsection (1), conditions included in a licence by virtue of that paragraph may require the licence holder –
- (a) to comply with any direction given by the economic regulator or the Secretary of State as to such matters as are specified in the licence or are of a description so specified; 15
 - (b) to consent to the disclosure of information provided in accordance with a direction given to the licence holder;
 - (c) except in so far as the economic regulator or Secretary of State consents to the person’s doing (or not doing) them, not to do (or to do) such things as are specified in the licence or are of a description so specified; 20
 - (d) to refer for determination by the economic regulator or Secretary of State such questions arising under the licence, or under any document referred to in the licence, as are specified in the licence or are of a description so specified, and 25
 - (e) to refer for approval by the economic regulator or the Secretary of State such things as are (or may be) required to be done under the licence, and such contracts or agreements made before the grant of the licence, as are specified in the licence or are of a description so specified. 30
- (3) Without prejudice to the generality of paragraph (a) of subsection (1), conditions in a licence may also include –
- (a) provision about the revenue that the licence holder may receive in respect of its activities (the licence holder’s “allowed revenue”);
 - (b) provision about how the licence holder’s allowed revenue is to be calculated. 35
- (4) In subsection (3) the reference to revenue that the licence holder may receive in respect of its activities includes revenue that is calculated by reference to estimates of the licence holder’s decommissioning and legacy costs, as defined in section 82 (financing of costs of decommissioning etc). 40
- (5) Without prejudice to the generality of paragraph (a) of subsection (1), conditions which are described in subsection (6) may be included in a licence by virtue of that paragraph, in respect of circumstances where a person (“the licence holder”) holds such a licence, and another person (“the candidate”) –

- (a) has applied or is considering whether to apply for a licence, or
 - (b) is considering whether to apply for financial support for carbon capture activities.
- (6) The conditions in this subsection are conditions which require the licence holder to comply with a direction given by the economic regulator or the Secretary of State requiring the licence holder to provide to the candidate – 5
 - (a) information in relation to the activities authorised by the licence, and
 - (b) any other assistance the candidate may reasonably require, for the purpose of determining whether to –
 - (i) apply for a licence, or 10
 - (ii) (as the case may be) apply for financial support for carbon capture activities.
- (7) Conditions included in a licence may contain provision for the conditions –
 - (a) to have effect or cease to have effect at such times and in such circumstances as may be determined by or under the conditions, or 15
 - (b) to be modified in such manner as may be specified in the conditions at such times and in such circumstances as may be so determined.
- (8) Any provision included by virtue of subsection (7) in a licence is to have effect in addition to the provision made by this Part with respect to the modification of the conditions of a licence. 20
- (9) Conditions included in a licence may provide for references in the conditions to any document to operate as references to that document as revised or re-issued from time to time.
- (10) Any sums received by the economic regulator in consequence of the provisions of any condition of a licence must be paid into the Consolidated Fund. 25

12 Standard conditions of licences

- (1) The Secretary of State may determine the conditions that are to be the standard conditions of licences.
- (2) The Secretary of State must publish any standard conditions determined under subsection (1) in whatever manner the Secretary of State considers appropriate. 30
- (3) Subject to subsections (4) and (5), each condition which is a standard condition is to be incorporated by reference in each licence.
- (4) Subsection (3) does not apply to a licence granted before the publication of the standard condition.
- (5) Subject to the following provisions of this section, the grantor of a licence in which standard conditions would, but for this subsection, be incorporated in accordance with subsection (3) may exclude or modify any of those standard conditions, to such extent as the grantor may consider requisite to meet the circumstances of a particular case. 35

- (6) Before excluding any standard conditions or making any modifications under subsection (5), the grantor must give notice—
- (a) stating that the grantor proposes to exclude the conditions or make the modifications and setting out the effect of so doing,
 - (b) stating the reasons why the grantor proposes to exclude the conditions or make the modifications, and 5
 - (c) specifying the time (which must not be less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed exclusions or modifications may be made, 10
- and must consider any representations or objections which are duly made and not withdrawn.
- (7) A notice under subsection (6) must be given—
- (a) by publishing the notice in whatever manner the grantor considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the exclusions or modifications, and 15
 - (b) by sending a copy of the notice to the appropriate devolved authorities (if any) and the Secretary of State.
- (8) The grantor must not exclude any conditions, or make any modifications, under subsection (5) unless the grantor is of the opinion that the exclusions or modifications are such that— 20
- (a) the licence holder would not be unduly disadvantaged in competing with other holders of licences, and
 - (b) no other holder of a licence would be unduly disadvantaged in competing with other holders of such licences (including the holder of the licence). 25
- (9) If, within the time specified in the notice under subsection (6), the Secretary of State (after consulting the appropriate devolved authorities (if any)) directs the grantor not to exclude or modify any standard condition, the grantor must comply with the direction. 30
- (10) The modification under subsection (5) of part of a standard condition does not prevent any other part of the condition from continuing to be treated as a standard condition for the purposes of this Part.
- (11) Where, in granting a licence, the grantor excludes or modifies any standard conditions under subsection (5), the grantor must publish a notice setting out— 35
- (a) each exclusion or modification,
 - (b) their effects, and the reason for adopting them, and
 - (c) how the grantor has taken account of any representations or objections made in accordance with subsection (6). 40
- (12) For the purposes of this section the “appropriate devolved authorities” are—

- (a) the Welsh Ministers, if provision making the exclusions and modifications proposed in the notice under subsection (6) would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 5
 - (b) the Scottish Ministers, if provision making the exclusions and modifications proposed in that notice would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 10
 - (c) the Department for the Economy in Northern Ireland, if provision making the exclusions and modifications proposed in that notice –
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 15
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- 13 Modification of conditions of licences** 20
- (1) The economic regulator may make modifications of –
 - (a) the conditions of a particular licence;
 - (b) the standard conditions of licences.
 - (2) Before making any modifications under this section, the economic regulator must give notice – 25
 - (a) stating that it proposes to make modifications;
 - (b) setting out the proposed modifications and their effect;
 - (c) stating the reasons why it proposes to make the modifications, and
 - (d) specifying the time within which representations with respect to the proposed modifications may be made. 30
 - (3) The time specified by virtue of subsection (2)(d) may not be less than 28 days from the date of the publication of the notice.
 - (4) A notice under subsection (2) must be given –
 - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the notice to the attention of persons likely to be affected by the making of the modifications, and 35
 - (b) by sending a copy of the notice to –
 - (i) each relevant licence holder, and
 - (ii) the Secretary of State. 40
 - (5) The economic regulator must consider any representations which are duly made.

- (6) If, within the time specified by virtue of subsection (2)(d), the Secretary of State directs the economic regulator not to make any modification, the economic regulator must comply with the direction.
- (7) Subsections (8) to (10) apply where, having complied with subsections (2) to (5), the economic regulator decides to proceed with the making of modifications of the conditions of any licence under this section. 5
- (8) The economic regulator must—
- (a) publish the decision and the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications, 10
 - (b) state the effect of the modifications,
 - (c) state how it has taken account of any representations duly made, and
 - (d) state the reason for any differences between the modifications and those set out in the notice by virtue of subsection (2)(b).
- (9) Each modification has effect from the date specified by the economic regulator in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2). 15
- (10) The date specified by virtue of subsection (9) may not be less than 56 days from the publication of the decision to proceed with the making of modifications under this section. 20
- (11) In this section “relevant licence holder”—
- (a) in relation to the modification of standard conditions, means the holder of a licence—
 - (i) which is to be modified by the inclusion of any new standard condition, or 25
 - (ii) which includes any standard conditions to which the modifications relate which are in effect at the time specified by virtue of subsection (2)(d), or
 - (b) in relation to the modification of a condition of a particular licence (other than a standard condition), means the holder of that particular licence. 30

14 Modification of conditions under section 13: supplementary

- (1) Subsections (2) and (3) apply where at any time the economic regulator modifies the conditions of licences under section 13.
- (2) If the conditions modified are standard conditions, the economic regulator must— 35
- (a) also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and

- (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The economic regulator may make such incidental or consequential modifications of any conditions of licences as it considers necessary or expedient. 5
- (4) The modification of part of a standard condition of a particular licence under section 13 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (5) The modification of a condition of a licence under this section has effect subject to the giving of a direction under paragraph 2 of Schedule 2 in relation to the decision to which the modification relates. 10

15 Modification by order under other enactments

- (1) Where the CMA or (as the case may be) the Secretary of State (in this section “the relevant authority”) makes a relevant order, the order may also provide for the modification of— 15
 - (a) the conditions of a particular licence, or
 - (b) the standard conditions of licences,to such extent as may appear to the relevant authority to be necessary or expedient for the purpose of giving effect to, or taking account of, any provision made by the order. 20
- (2) In subsection (1) “relevant order” means—
 - (a) an order under section 75, 83 or 84 of, or paragraph 5, 10 or 11 of Schedule 7 to, the Enterprise Act 2002 where—
 - (i) one or more than one of the enterprises which have, or may have, ceased to be distinct enterprises was engaged in the carrying on of activities authorised or regulated by a licence, or 25
 - (ii) one or more than one of the enterprises which will or may cease to be distinct enterprises is engaged in the carrying on of activities authorised or regulated by a licence, or 30
 - (b) an order under section 160 or 161 of that Act where the feature, or combination of features, of the market or markets in the United Kingdom for goods or services which prevents, restricts or distorts competition relates to activities authorised or regulated by a licence. 35
- (3) The modification under subsection (1)(a) of part of a standard condition of a particular licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of this Part.
- (4) Where at any time the relevant authority modifies under subsection (1)(b) the standard conditions of licences, the relevant authority— 40

- (a) must also make (as nearly as possible) the same modifications of those conditions for the purposes of their incorporation in licences granted after that time, and
 - (b) may, after consultation with the economic regulator, make such incidental or consequential modifications as the relevant authority considers necessary or expedient of any conditions of licences under that provision granted before that time. 5
- (5) Where at any time the relevant authority modifies standard conditions under subsection (4)(a) for the purposes of their incorporation in licences granted after that time, the relevant authority must publish those modifications in such manner as the relevant authority considers appropriate. 10
- (6) Expressions used in subsection (2) and in Part 3 or (as the case may be) Part 4 of the Enterprise Act 2002 have the same meanings in that subsection as in that Part.

Interim power of Secretary of State to grant licences 15

16 Interim power of Secretary of State to grant licences

Schedule 1 makes provision about the power of the Secretary of State to grant licences during an interim period.

Termination of licence

17 Termination of licence 20

- (1) If the economic regulator considers that a termination event has arisen, or is likely to arise, the economic regulator must notify the persons mentioned in subsection (2) as soon as reasonably practicable.
- (2) Those persons are –
- (a) the Secretary of State; 25
 - (b) the Scottish Ministers, if an activity authorised by the licence is within Scottish devolved competence;
 - (c) the Welsh Ministers, if an activity authorised by the licence is within Welsh devolved competence;
 - (d) the Department for the Economy in Northern Ireland, if an activity authorised by the licence is within Northern Ireland devolved competence; 30
 - (e) the Oil and Gas Authority;
 - (f) any affected persons not falling within paragraphs (a) to (e) that the economic regulator considers appropriate. 35
- (3) A notice under subsection (1) must specify –
- (a) in a case where a termination event has arisen, the date on which the economic regulator proposes to revoke the licence, and

- (b) in any case, the date by which any representations must be made.
- (4) For the purposes of this section an activity authorised by a licence –
- (a) is within Scottish devolved competence if provision about that activity would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 5
 - (b) is within Welsh devolved competence if provision about that activity would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 10
 - (c) is within Northern Ireland devolved competence if provision about that activity –
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 15
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.
- (5) In this section – 20
- “affected person” means a person that the economic regulator considers may be affected by the decision as to whether the licence should be terminated;
- “termination event” means a state of affairs in which the economic regulator is authorised to revoke the licence. 25

Transfer of licences

18 Transfer of licences

- (1) A licence –
- (a) is to be capable of being transferred by the licence holder, with the consent of the economic regulator, in accordance with this section and subject to any term of the licence relating to its transfer; 30
 - (b) may include conditions which must be complied with before the licence can be transferred.
- (2) A transfer may relate to the whole or any part of the licence.
- (3) The reference in subsection (2) to part of a licence is a reference to a part of the activities authorised by the licence (whether described by reference to activities being carried on by the licence holder or to activities which the licence holder is authorised to carry on). 35
- (4) Such consent may be given subject to compliance with such modification conditions or other conditions as the economic regulator considers necessary or expedient. 40

- (5) In the case of a partial transfer, conditions imposed under subsection (4) may make, as respects so much of the licence as is proposed to be retained by the transferor, provision different from that made as respects so much of the licence as is proposed to be transferred.
- (6) Conditions imposed under subsection (4) may in particular require— 5
- (a) the transfer of rights, liabilities or property to the transferee;
 - (b) the creation of rights in relation to property, rights or liabilities in favour of the transferee;
 - (c) the creation of other rights and liabilities as between the transferor and transferee. 10
- (7) A purported transfer of a licence is to be void— 15
- (a) if the licence is not capable of transfer or the economic regulator has not given its consent under section 19,
 - (b) if the purported transfer is in breach of a condition of the licence, or
 - (c) if there has, before the purported transfer, been a contravention of a condition subject to compliance with which the economic regulator’s consent is given.
- (8) In this section— 20
- “modification condition” means a condition requiring, or otherwise providing for the making of, modifications to the conditions of a licence;
 - “transfer” includes any form of transfer or assignment or, in Scotland, assignation.

19 Consenting to transfer

- (1) Before giving consent to the transfer of a licence under section 18(1), the economic regulator must— 25
- (a) publish a notice stating that it proposes to grant consent to the transfer,
 - (b) send a copy of the notice to such persons as the economic regulator considers are likely to be affected by the decision, and
 - (c) consider any representations or objections that are duly made and not withdrawn. 30
- (2) A notice under subsection (1) must— 35
- (a) state the reasons why the economic regulator proposes to give consent;
 - (b) specify any conditions the economic regulator proposes to impose under section 18(4);
 - (c) specify the time from the date of publication of the notice (which must not be less than two months) within which representations or objections with respect to the proposed transfer may be made,
- and must be published in such manner as the economic regulator considers appropriate for bringing it to the attention of persons likely to be affected by the transfer. 40

- (3) Subject to subsection (5), the economic regulator must, following consideration of any representations or objections under subsection (2), give the Secretary of State not less than 28 days' notice of –
- (a) any proposal to give consent to the transfer, and
 - (b) any conditions the economic regulator proposes to impose under section 18(4). 5
- (4) If, before the expiry of the time specified in a notice under subsection (3), the Secretary of State gives the economic regulator –
- (a) a direction not to consent to the transfer, or
 - (b) a direction not to impose a condition of which notice was given under subsection (3)(b), 10
- the economic regulator must comply with that direction.
- (5) Where the Secretary of State gives no direction under subsection (4)(a), the economic regulator may give consent to the transfer of the licence after –
- (a) the expiry of the time specified in the notice under subsection (3), or 15
 - (b) if earlier than the time in paragraph (a), the time at which the Secretary of State informs the economic regulator that, in relation to the notice –
 - (i) no direction will be given under subsection (4)(a), and
 - (ii) no direction or, (as the case may be) no further direction will be given under subsection (4)(b). 20

Appeal from decisions of the economic regulator

20 Appeal to the CMA

- (1) An appeal may be made to the CMA against a decision by the economic regulator to proceed with the modification of a condition of a licence under section 13. 25
- (2) An appeal may be brought under this section only by –
- (a) a relevant licence holder (within the meaning of section 13);
 - (b) a transport and storage network user whose interests are materially affected by the decision;
 - (c) a qualifying body or association in the capacity of representing a person falling within paragraph (a) or (b); 30
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission to bring an appeal only on one of the following grounds – 35
- (a) in relation to an appeal brought by a person falling within subsection (2)(b), that the interests of the person are not materially affected by the decision;

- (b) in relation to an appeal brought by a qualifying body or association, that the interests of the person represented are not materially affected by the decision;
 - (c) in relation to any appeal—
 - (i) that the appeal is brought for reasons that are trivial or vexatious; 5
 - (ii) that the appeal has no reasonable prospect of success.
- (5) References in this section to a “qualifying body or association” are to a body or association whose functions are or include representing persons in respect of interests of theirs which are materially affected by the decision in question. 10
- (6) In this section “transport and storage network user” has the same meaning as in section 1.
- 21 Procedure on appeal to CMA**
- (1) Schedule 2 has effect.
 - (2) Except where specified otherwise in Schedule 2, the functions of the CMA with respect to an appeal under section 20 are to be carried out on behalf of the CMA by a group constituted for the purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013. 15
- 22 Determination by CMA of appeal**
- (1) This section applies to every appeal brought under section 20. 20
 - (2) In determining an appeal the CMA must have regard, to the same extent as is required of the economic regulator, to the matters to which the economic regulator must have regard—
 - (a) in the carrying out of its principal objectives under section 1, and
 - (b) in the performance of its duties under that section. 25
 - (3) In determining the appeal the CMA—
 - (a) may have regard to any matter to which the economic regulator was not able to have regard in relation to the decision which is the subject of the appeal, but
 - (b) must not, in the exercise of that power, have regard to any matter to which the economic regulator would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so. 30
 - (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds— 35
 - (a) that the economic regulator failed properly to have regard to any matter mentioned in subsection (2);
 - (b) that the economic regulator failed to give the appropriate weight to any matter mentioned in subsection (2); 40

- (c) that the decision was based, wholly or partly, on an error of fact;
 - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the economic regulator by virtue of section 13(8)(b);
 - (e) that the decision was wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against. 5

23 CMA’s powers on allowing appeal

- (1) This section applies where the CMA allows an appeal to any extent.
- (2) If the appeal is in relation to a price control decision, the CMA must do one or more of the following— 10
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the economic regulator for reconsideration and determination in accordance with any directions given by the CMA;
 - (c) substitute the CMA’s decision for that of the economic regulator (to the extent that the appeal is allowed) and give any directions to the economic regulator or any other party to the appeal. 15
- (3) If the appeal is in relation to any other decision, the CMA must do one or both of the following— 20
- (a) quash the decision (to the extent that the appeal is allowed);
 - (b) remit the matter back to the economic regulator for reconsideration and determination in accordance with any directions given by the CMA.
- (4) A direction under subsection (2) or (3) must not require a person to do anything that the person would not have power to do (apart from the direction). 25
- (5) A person to whom a direction is given under that subsection must comply with it.
- (6) A direction given under that subsection to a person other than the economic regulator is enforceable as if it were an order of the High Court or (in Scotland) an order of the Court of Session. 30
- (7) For the purposes of this section a decision is a “price control decision”, in relation to the modification of a condition of a licence, if the purpose of the condition is, in the CMA’s opinion, to limit or control the charges on, or the revenue of, the holder of the licence. 35
- (8) In determining for the purposes of subsection (7) what the purpose of a condition is the condition may be assessed on its own or in combination with any other conditions of the licence.
- (9) In this section and section 24 any reference to a party to an appeal is to be read in accordance with Schedule 2. 40

24 Time limits for CMA to determine an appeal

- (1) The CMA must—
 - (a) determine an appeal against a price control decision within the period of 6 months beginning with the permission date;
 - (b) determine an appeal against any other decision within the period of 4 months beginning with the permission date. 5
- (2) Subsection (1)(a) or (b) does not apply if subsection (3) applies.
- (3) This subsection applies where—
 - (a) the CMA has received representations on the timing of the determination from a party to the appeal, and 10
 - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1)(a) or (b).
- (4) Where subsection (3) applies, the CMA must—
 - (a) determine an appeal against a price control decision within the period specified by it, which must not be longer than the period of 7 months beginning with the permission date; 15
 - (b) determine an appeal against any other decision within the period specified by it, which must not be longer than the period of 5 months beginning with the permission date.
- (5) Where subsection (3) applies, the CMA must also— 20
 - (a) inform the parties to the appeal of the time limit for determining the appeal, and
 - (b) publish that time limit in such manner as it considers appropriate for the purpose of bringing it to the attention of any other persons likely to be affected by the determination. 25
- (6) In this section “price control decision” is to be read in accordance with section 23.
- (7) References in this section to the “permission date” are to the date on which the CMA gave permission to bring the appeal in accordance with section 20(3). 30

25 Determination of appeal by CMA: supplementary

- (1) A determination by the CMA on an appeal—
 - (a) must be contained in an order made by the CMA;
 - (b) must set out the reasons for the determination;
 - (c) takes effect at the time— 35
 - (i) specified in the order, or
 - (ii) determined in accordance with provision made in the order;
 - (d) must be notified by the CMA to the parties to the appeal;
 - (e) must be published by the CMA—

- (i) as soon as reasonably practicable after the determination is made;
 - (ii) in such manner as the CMA considers appropriate for the purpose of bringing the determination to the attention of any person likely to be affected by it (other than a party to the appeal). 5
- (2) The CMA may exclude from publication under section 25(1)(e) any information which it is satisfied is –
 - (a) commercial information, the disclosure of which would, or might in the CMA’s opinion, significantly harm the legitimate business interests of an undertaking to which it relates, or 10
 - (b) information relating to the private affairs of an individual, the disclosure of which would, or might in the CMA’s opinion, significantly harm the individual’s interests.
- (3) The economic regulator must take such steps as it considers necessary for it to comply with an order of the CMA made by virtue of subsection (1)(a). 15
- (4) The steps must be taken –
 - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
 - (b) in any other case, within a reasonable time. 20
- (5) Subsections (2) to (4) of section 14 (consequences of modification of standard terms) apply where a condition of a licence is modified in accordance with section 23 as they apply where a condition of a licence is modified under section 13.

Information 25

26 Provision of information to or by the economic regulator

- (1) The economic regulator may provide to a person within subsection (2) such information as the economic regulator considers necessary in connection with the exercise by the economic regulator of its functions relating to the regulation of licensable activities. 30
- (2) The persons within this subsection are –
 - (a) the Oil and Gas Authority;
 - (b) the Environment Agency;
 - (c) the Scottish Environmental Protection Agency;
 - (d) Natural Resources Wales; 35
 - (e) the Health and Safety Executive;
 - (f) the Health and Safety Executive for Northern Ireland;
 - (g) the CMA;
 - (h) the Scottish Ministers;
 - (i) the Welsh Ministers; 40

- (j) the Department for the Economy in Northern Ireland;
 - (k) the Northern Ireland Environment Agency;
 - (l) the Secretary of State;
 - (m) any other person the economic regulator considers appropriate who has powers or duties conferred by or by virtue of primary legislation which the economic regulator considers relevant to the exercise of the economic regulator’s functions relating to the regulation of licensable activities. 5
- (3) The economic regulator may by notice request from a person within subsection (2) such information as the economic regulator considers necessary in connection with the exercise by the economic regulator of its functions relating to the regulation of licensable activities. 10
- (4) A person to whom a request is made under subsection (3) must, so far as reasonably practicable, provide the requested information within such period, and in such form and manner, as may be specified in the notice. 15
- (5) Except as provided by subsection (6), the disclosure of information under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of information (however imposed). 20
- (6) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by subsection (1) or, as the case may be, the duty under subsection (4) is to be taken into account). 25
- (7) In this section “primary legislation” means—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation. 30
- 27 Power of Secretary of State to require information**
- (1) The Secretary of State may by notice in writing require a licence holder to provide the Secretary of State with information which is reasonably required by the Secretary of State for the purposes of the Secretary of State’s functions under this Part. 35
- (2) A notice under subsection (1) must specify—
- (a) the form and manner in which information is to be provided, and
 - (b) the time within which it is to be provided.
- (3) A licence holder may not be required under this section to provide any information that would be protected from disclosure or production in legal 40

proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications.

- (4) Except as provided by subsection (5), the disclosure of information under this section does not breach –
- (a) any obligation of confidence owed by the licence holder making the disclosure, or 5
 - (b) any other restriction on the disclosure of information (however imposed).
- (5) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, a requirement imposed under subsection (1) is to be taken into account). 10

Other functions of the economic regulator

28 Monitoring, information gathering etc

- (1) The economic regulator must keep under review the carrying on in the United Kingdom and elsewhere of the following activities – 15
- (a) operating a site for the disposal of carbon dioxide by way of geological storage;
 - (b) providing a service of transporting carbon dioxide by a licensable means of transportation; 20
 - (c) activities ancillary to activities mentioned in paragraph (a) or (b).
- (2) The economic regulator may, for the purpose of facilitating the performance of its functions under this Part, collect information with respect to such activities.
- (3) The economic regulator must give the Secretary of State or the CMA any information they may request with respect to any matter relating to the economic regulator’s functions. 25

29 Power to require information for purposes of monitoring

- (1) The economic regulator may, for the purpose of exercising its functions under subsections (1) and (2) of section 28, serve a notice under subsection (2) on any licence holder. 30
- (2) A notice under this subsection is a notice which –
- (a) requires the person on whom it is served to produce, at a time and place specified in the notice, to the economic regulator any documents which are specified or described in the notice and are in that person’s custody or under their control, or 35
 - (b) requires that person, if they are carrying on a business, to provide to the economic regulator in the form and manner, and within the period,

specified in the notice, the information specified or described in the notice.

- (3) In paragraphs (a) and (b) of subsection (2) the reference to the economic regulator includes a person appointed by the economic regulator for the purpose of exercising the function in question. 5
- (4) A person who intentionally alters, suppresses or destroys any document or record of information which that person has been required to produce by a notice under subsection (2) is guilty of an offence liable— 10
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum;
 - (c) on conviction on indictment, to a fine.

30 Duty to carry out impact assessment

- (1) This section applies where— 15
- (a) the economic regulator is proposing to do anything for the purposes of, or in connection with, the carrying out of any function exercisable by it under or by virtue of this Part, and
 - (b) it appears to the economic regulator that the proposal is important; 20
- but this section does not apply if it appears to the economic regulator that the urgency of the matter makes it impracticable or inappropriate for the economic regulator to comply with the requirements of this section.
- (2) A proposal is important for the purposes of this section only if its implementation would be likely to do one or more of the following— 25
- (a) involve a major change in the activities carried on by the economic regulator;
 - (b) have a significant impact on persons engaged in the capture, transportation or storage of carbon dioxide;
 - (c) have a significant impact on persons engaged in commercial activities connected with the capture, transportation or storage of carbon dioxide;
 - (d) have a significant impact on the general public in the United Kingdom or in a part of the United Kingdom; 30
 - (e) have significant effects on the environment.
- (3) Before implementing its proposal, the economic regulator must either— 35
- (a) carry out and publish an assessment of the likely impact of implementing the proposal, or
 - (b) publish a statement setting out its reasons for thinking that it is unnecessary for it to carry out an assessment.
- (4) An assessment carried out under this section must— 40
- (a) include an assessment of the likely effects on the environment of implementing the proposal, and

- (b) relate to such other matters as the economic regulator considers appropriate.
- (5) In determining the matters to which an assessment under this section should relate, the economic regulator must have regard to such general guidance relating to the carrying out of impact assessments as it considers appropriate. 5
- (6) An assessment carried out under this section may take such form as the economic regulator considers appropriate.
- (7) Where the economic regulator publishes an assessment under this section –
 - (a) it must provide an opportunity of making representations to the economic regulator about its proposal to members of the public and other persons who, in the economic regulator’s opinion, are likely to be affected to a significant extent by the proposal’s implementation, 10
 - (b) the published assessment must be accompanied by a statement setting out how representations may be made, and
 - (c) the economic regulator must not implement its proposal unless the period for making representations about the proposal has expired and it has considered all the representations that were made in that period. 15
- (8) Where the economic regulator is required (apart from this section) –
 - (a) to consult about a proposal to which this section applies, or
 - (b) to give a person an opportunity of making representations about it, 20the requirements of this section are in addition to, but may be performed contemporaneously with, the other requirements.
- (9) Every report under section 41 (annual reports on transport and storage licensing functions) must set out –
 - (a) a list of the assessments under this section carried out during the financial year to which the report relates, and 25
 - (b) a summary of the decisions taken during that year in relation to proposals to which assessments carried out in that year or previous financial years relate.
- (10) The publication of anything under this section must be in such manner as the economic regulator considers appropriate for bringing it to the attention of the persons who, in the economic regulator’s opinion, are likely to be affected if its proposal is implemented. 30

31 Reasons for decisions

- (1) This section applies to the following decisions of the economic regulator or the Secretary of State – 35
 - (a) the revocation of a licence;
 - (b) the modification of the conditions of a licence;
 - (c) the giving of any directions or consent in pursuance of a condition included in a licence by virtue of section 11(2)(a) or (c); 40

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- (d) the determination of a question referred in pursuance of a condition included in a licence by virtue of section 11(2)(d);
 - (e) the making of a final order, the making or confirmation of a provisional order or the revocation of a final order or of a provisional order which has been confirmed. 5
- (2) As soon as reasonably practicable after making such a decision the economic regulator or the Secretary of State (“the decision maker”) must –
- (a) publish a notice stating the reasons for the decision in such manner as the decision maker considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be interested, and 10
 - (b) send a copy of the notice to the licence holder to whose licence, or to whom, the decision relates.
- (3) In preparing a notice under subsection (2) the decision maker must have regard to the need for excluding, so far as that is practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where the decision maker considers that publication of that matter would or might seriously and prejudicially affect the interests of that individual or body. 15
- (4) In this Part “final order” and “provisional order” are to be interpreted in accordance with section 25(8) of the Electricity Act 1989, in the application of that provision by virtue of regulations within section 32(2). 20

Enforcement

32 Enforcement of obligations of licence holders

- (1) The Secretary of State may by regulations make provision for the enforcement of conditions of licences and of other requirements imposed on licence holders by or under this Part. 25
- (2) Regulations under subsection (1) may, in particular –
 - (a) provide for conditions of licences to be enforceable by the economic regulator as if licence holders (see section 55) were regulated persons within the meaning given by section 25 of Electricity Act 1989 and conditions of licences (under section 7) were relevant conditions within the meaning given by that section 25; 30
 - (b) provide that, for purposes specified in the regulations, a requirement of a notice served on a licence holder under section 29 is to be enforceable as if the licence holder were a regulated person within the meaning given by section 25 of Electricity Act 1989 and the requirement were a relevant requirement within the meaning given by that section. 35
- (3) Regulations under this section are subject to the affirmative procedure. 40

False statements

33 Making of false statements etc

- (1) A person who, in giving any information or making any application for the purposes of any provision of this Part, or of any regulation made under any provision of this Part, makes any statement which the person knows to be false in a material particular, or recklessly makes any statement which is false in a material particular, is guilty of an offence and liable – 5
- (a) on summary conviction in England and Wales, to a fine;
 - (b) on summary conviction in Scotland or Northern Ireland, to a fine not exceeding the statutory maximum; 10
 - (c) on conviction on indictment, to a fine.
- (2) Proceedings for an offence under subsection (1) must not in England and Wales be instituted except by or with the consent of the Secretary of State or the Director of Public Prosecutions.
- (3) Proceedings for an offence under subsection (1) must not in Northern Ireland be instituted except by or with the consent of the Director of Public Prosecutions for Northern Ireland. 15

Criminal liability and procedure

34 Liability of officers of entities

- (1) Where an offence under this Part committed by a body corporate is proved – 20
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate,
- that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly. 25
- (2) In subsection (1) “officer”, in relation to a body corporate, means –
- (a) any director, manager, secretary or other similar officer of the body corporate, or
 - (b) any person purporting to act in any such capacity. 30
- (3) In subsection (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly. 35

35 Criminal proceedings

- (1) Proceedings for an offence under this Part may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.
- (2) Section 3 of the Territorial Waters Jurisdiction Act 1878 (restriction on prosecutions) does not apply to any proceedings for an offence under this Part. 5
- (3) Proceedings for an offence under this Part alleged to have been committed in an offshore place may not be instituted in England and Wales except—
- (a) by the Secretary of State or a person authorised by the Secretary of State, or 10
- (b) by or with the consent of the Director of Public Prosecutions.
- (4) Proceedings for an offence under this Part alleged to have been committed in an offshore place may not be instituted in Northern Ireland except—
- (a) by the Secretary of State or a person authorised by the Secretary of State, or 15
- (b) by or with the consent of the Director of Public Prosecutions for Northern Ireland.
- (5) In this section “offshore place” means a place in, under or over—
- (a) the territorial sea adjacent to the United Kingdom, or 20
- (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008).

CHAPTER 2

FUNCTIONS WITH RESPECT TO COMPETITION

- 36 Functions under the Enterprise Act 2002** 25
- (1) The functions to which subsection (2) applies are to be concurrent functions of the economic regulator and the CMA.
- (2) This subsection applies to the functions of the CMA under Part 4 of the Enterprise Act 2002 (other than sections 166, 171 and 174E) so far as those functions are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013) and relate to commercial activities connected with relevant storage and transport activities. 30
- (3) So far as necessary for the purposes of, or in connection with, subsections (1) and (2)—
- (a) references in Part 4 of the Enterprise Act 2002 to the CMA (including references in provisions of that Act applied by that Part) are to be construed as including references to the economic regulator (except in sections 166, 171 and 174E of that Act and in any other provision of that Act where the context otherwise requires); 35

- (b) references in that Part to section 5 of that Act are to be construed as including references to section 28(1) and (2) of this Act.
 - (4) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to the economic regulator by virtue of subsections (1) and (2) –
 - (a) as if for subsection (1) of that section there were substituted – 5
 - “(1) Where the Gas and Electricity Markets Authority –
 - (a) is proposing to carry out its functions under section 28(1) or (2) of the Energy Act 2022 in relation to a matter for the purposes mentioned in subsection (2), and 10
 - (b) considers that the matter is one in respect of which it would be appropriate for the Gas and Electricity Markets Authority to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131, 15
 - the Gas and Electricity Markets Authority must publish a notice under this section (referred to in this Part as a “market study notice”).”, and”
 - (b) as if in subsection (2)(a) of that section, for “the acquisition or supply of goods or services of one or more than one description in the United Kingdom” there were substituted “commercial activities connected with activities to which section 36(2) of the Energy Act 2022 applies”. 20
- (5) It is to be the duty of the economic regulator, for the purpose of assisting a CMA group in carrying out an investigation on a market investigation reference made by the economic regulator (under section 131 of the Enterprise Act 2002) by virtue of subsection (1), to give to the group – 25
 - (a) any information which is in the economic regulator’s possession and which relates to matters falling within the scope of the investigation and –
 - (i) is requested by the group for that purpose, or 30
 - (ii) is information which, in the economic regulator’s opinion, it would be appropriate for that purpose to give to the group without any such request, and
 - (b) any other assistance which the group may require and which it is within the economic regulator’s power to give, in relation to any such matters, 35
- and the group must, for the purposes of carrying out any such investigation, take into account any information given to them for that purpose under this subsection.
- (6) Insubsection (5) “CMA group” has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013. 40

37 Functions under the Competition Act 1998

- (1) The economic regulator is to be entitled to exercise, concurrently with the CMA, the functions of the CMA under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51), so far as relating to— 5
- (a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act, or
- (b) conduct of the kind mentioned in section 18(1) of that Act, or
- which relate to the carrying on of relevant transport and storage activities.
- (2) So far as necessary for the purposes of, or in connection with, the provisions of subsection (1), references in Part 1 of the Competition Act 1998 to the CMA are to be read as including a reference to the economic regulator (except in sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4), 51, 52(6) and (8) and 54 of that Act and in any other provision of that Act where the context otherwise requires). 10
- 15

38 Sections 36 and 37: supplementary

- (1) Before the CMA or the economic regulator first exercises in relation to any matter functions which are exercisable concurrently by virtue of section 36(1) or 37(1), it must consult the other.
- (2) Neither the CMA nor the economic regulator is to exercise in relation to any matter functions which are exercisable concurrently virtue of section 36(1) or 37(1) if functions which are so exercisable have been exercised in relation to that matter by the other. 20
- (3) If any question arises as to whether section 36(1) or 37(1) applies to any particular case, that question is to be referred to and determined by the Secretary of State, and no objection may be taken to anything done under— 25
- (a) Part 4 of the Enterprise Act 2002, or
- (b) Part of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6), 40B(1) to (4) and 51).
- by or in relation to the economic regulator on the ground that it should have been done by or in relation to the CMA. 30
- (4) In sections 36 and 37 “relevant storage and transport activities” means—
- (a) activities such as are mentioned in section 2(2), and
- (b) activities ancillary to such activities.

CHAPTER 3

35

REPORTING REQUIREMENTS

39 Forward work programmes

- (1) The economic regulator must, before each financial year, publish a document (the “transport and storage forward work programme”) containing a general

description of the relevant projects, other than those comprising routine activities in the exercise of its functions, which it plans to undertake during the year.

- (2) That description must include the objectives of each relevant project.
- (3) The forward work programme for any year must also include an estimate of the overall expenditure which the economic regulator expects to incur during the year in the exercise of its relevant functions. 5
- (4) Before publishing the forward work programme for any year, the economic regulator must give notice –
 - (a) containing a draft of the transport and storage forward work programme, and 10
 - (b) specifying the time within which representations or objections to the proposals contained in it may be made,and must consider any representations or objections which are duly made and not withdrawn. 15
- (5) The notice under subsection (4) must be published by the economic regulator in such manner as it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them.
- (6) In this section – 20
 - “relevant functions” means functions of the economic regulator under this Part;
 - “relevant project” means a project relating to the economic regulator’s functions under this Part.

40 Information in relation to CCUS strategy and policy statement 25

- (1) As soon as reasonably practicable after the designation of a statement as the CCUS strategy and policy statement for the purposes of this Part, the economic regulator must publish a document setting out the required information in relation to the statement.
- (2) The economic regulator must include the required information in relation to a CCUS strategy and policy statement in the transport and storage forward work programme for each financial year, subject to making such modifications to the information as the economic regulator considers appropriate from the version as last published under this subsection. 30
- (3) The required information in relation to a CCUS strategy and policy statement to be set out in a document or forward work programme is – 35
 - (a) the strategy the economic regulator intends to adopt for the purpose of furthering the delivery of the policy outcomes contained in the statement (both in respect of the year in or for which the document or programme is issued and beyond); 40

- (b) the things the economic regulator proposes to do in implementing that strategy (including when the economic regulator proposes to do them);
 - (c) the ways in which the economic regulator has had regard to the strategic priorities contained in the statement in setting out the information required under paragraphs (a) and (b). 5
- (4) The duty under subsection (1) does not apply if –
 - (a) the economic regulator does not think it reasonably practicable to publish the document mentioned in that subsection before the time when the economic regulator is next required to publish a transport and storage forward work programme, and 10
 - (b) the economic regulator includes the required information in that forward work programme.
- (5) The duty under subsection (2) does not apply in relation to the first financial year beginning after the designation of the statement if – 15
 - (a) the economic regulator does not think it reasonably practicable to include the required information in the transport and storage forward work programme for that year, and
 - (b) the economic regulator includes the required information in a document published under subsection (1). 20
- (6) The duty under subsection (2) does not apply in relation to a financial year if the Secretary of State gives notice to the economic regulator under this subsection that the statement’s designation –
 - (a) will be withdrawn before the beginning of the year, or
 - (b) is expected to have been withdrawn before the beginning of the year. 25
- (7) Subsections (4) and (5) of section 39 (notice requirements) apply to a document published under subsection (1) as they apply to a transport and storage forward work programme.
- (8) In this section –
 - “CCUS strategy and policy statement”, “policy outcomes” and “strategic priorities” have the same meaning as in Chapter 3 of Part 2 (see section 88); 30
 - “designation”, in relation to a CCUS strategy and policy statement, means designation of the statement by the Secretary of State under section 88; 35
 - “transport and storage forward work programme” has the meaning given by section 39.

41 Annual report on transport and storage licensing functions

- (1) The economic regulator must, as soon as practicable after the end of each financial year, make to the Secretary of State a report (the “annual T&S report” for that year) on – 40

- (a) the exercise of its functions under this Part during that year including a general survey of developments in respect of matters falling within the scope of those functions, and
 - (b) the activities of the CMA during that year in respect of any references made by the economic regulator by virtue of section 36(1). 5
- (2) The annual T&S report for each year must include–
 - (a) a report on the progress of the projects described in the transport and storage forward work programme for that year;
 - (b) a summary of final and provisional orders made and penalties imposed by the economic regulator during the year; 10
 - (c) a report on such other matters as the Secretary of State may from time to time require.
- (3) The annual T&S report for each year must also include a report on–
 - (a) the ways in which the economic regulator has carried out its duties under section 89(1) in relation to the CCUS strategy and policy statement (so far as the statement's designation was in effect during the whole or any part of the year), and 15
 - (b) the extent to which the economic regulator has done the things set out under section 40 in a transport and storage forward work programme or other document as the things the economic regulator proposed to do during that year in implementing its strategy for furthering the delivery of the policy outcomes contained in the statement (see subsection (3)(b) of that section). 20
- (4) The report mentioned in subsection (3) must, in particular, include–
 - (a) the economic regulator's assessment of how the carrying out of its functions under this Part during the year has contributed to the delivery of the policy outcomes contained in the CCUS strategy and policy statement, and 25
 - (b) if the economic regulator has failed to do any of the things mentioned in subsection (3)(b), an explanation for the failure and the actions the economic regulator proposes to take to remedy it. 30
- (5) In subsections (3) and (4)–
 - “CCUS strategy and policy statement” and “policy outcomes” have the same meaning as in Chapter 3 of Part 2 (see section 88);
 - “transport and storage forward work programme” has the meaning given by section 39(1). 35
- (6) The Secretary of State must consult the economic regulator before exercising the power under subsection (2)(c) in relation to any matter.
- (7) The Secretary of State must–
 - (a) lay a copy of each annual T&S report before each House of Parliament, 40
 - (b) send a copy of the report to the Scottish Ministers, the Welsh Ministers and the Department for the Economy in Northern Ireland, and

- (c) arrange for the report to be published in such manner as the Secretary of State considers appropriate.
- (8) The Scottish Ministers must lay a copy of each annual T&S report before the Scottish Parliament.
- (9) The Welsh Ministers must lay a copy of each annual T&S report before Senedd Cymru. 5
- (10) The Department for the Economy in Northern Ireland must lay a copy of each annual T&S report before the Northern Ireland Assembly.
- (11) In making or preparing any report under this section the economic regulator must have regard to the need for excluding, so far as practicable, any matter which relates to the affairs of a particular individual or body of persons (corporate or unincorporate), where publication of that matter would or might, in the opinion of the economic regulator, seriously and prejudicially affect the interests of that individual or body. 10

CHAPTER 4

15

SPECIAL ADMINISTRATION REGIME

Transport and storage administration orders

42 Transport and storage administration orders

- (1) A transport and storage administration order means an order which—
 - (a) is made by the court in relation to a company which holds a licence under section 7, and 20
 - (b) directs that, while the order is in force, the affairs, business and property of the company are to be managed by a person appointed by the court.
- (2) In this Chapter—
 - (a) a transport and storage administration order is referred to as a T&S administration order, 25
 - (b) a company which holds a licence under section 7 is referred to as a T&S company, and
 - (c) the person appointed in relation to a T&S company for the purposes of a T&S administration order is referred to as the T&S administrator of the company. 30
- (3) The T&S administrator of a company must manage the company’s affairs, business and property, and exercise and perform all the powers and duties of a T&S administrator, so as to achieve the objective set out in section 43. 35
- (4) In relation to a T&S administration order applying to a non-GB company, references in this section to the affairs, business and property of the company are references only —

- (a) to its affairs and business so far as carried on in Great Britain or a relevant controlled place, and
 - (b) to its property in Great Britain or a relevant controlled place.
- (5) In this section, “relevant controlled place” means a controlled place within the meaning of section 17(3) to (4) of the Energy Act 2008 other than a place— 5
- (a) in Great Britain,
 - (b) in Northern Ireland, or
 - (c) in, under or over so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland.

43 Objective of a transport and storage administration 10

- (1) The objective of a transport and storage administration is to secure—
- (a) that the activities authorised by the licence of the T&S company to which the administration relates commence, or continue, in a manner which—
 - (i) is efficient and economical, and 15
 - (ii) ensures the safety and security of the transport and storage network, or the part of that network, to which the licence relates, and
 - (b) that it becomes unnecessary, by one or both of the following means, for the T&S administration order to remain in force for that purpose. 20
- (2) Those means are—
- (a) the rescue as a going concern of the company subject to the T&S administration order, and
 - (b) transfers falling within subsection (3).
- (3) A transfer falls within this subsection if it is a transfer as a going concern— 25
- (a) to another company, or
 - (b) as respects different parts of the undertaking of the company subject to the T&S administration order, to two or more different companies, of so much of that undertaking as it is appropriate to transfer for the purpose of achieving the objective of the transport and storage administration. 30
- (4) The means by which transfers falling within subsection (3) may be effected include, in particular—
- (a) a transfer of the undertaking of the company subject to the T&S administration order, or of a part of its undertaking, to a wholly-owned subsidiary of that company, and 35
 - (b) a transfer to a company of securities of a wholly-owned subsidiary to which there has been a transfer falling within paragraph (a).
- (5) The objective of a transport and storage administration may be achieved by a transfer falling within subsection (3) to the extent only that—

-
- (a) the rescue as a going concern of the company subject to the T&S administration order is not reasonably practicable or is not reasonably practicable without such a transfer,
 - (b) the rescue of that company as a going concern will not achieve that objective or will not do so without such a transfer, 5
 - (c) such a transfer would produce a result for the company's creditors as a whole that is better than the result that would be produced without it, or
 - (d) such a transfer would, without prejudicing the interests of those creditors as a whole, produce a result for the company's members as a whole that is better than the result that would be produced without it. 10
- (6) In subsection (1)(a)–
- (a) the reference to the activities authorised by the licence of the T&S company to which the administration relates includes a reference to any construction work or other activities needing to be carried out to commence those activities, and 15
 - (b) the reference to the safety and security of the transport and storage network, or the part of that network, to which the licence relates includes a reference to the safety and security of any infrastructure and facilities being constructed for that network, or that part of that network. 20

Application and amendment of the Energy Act 2004

44 Application of certain provisions of the Energy Act 2004

- (1) Sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees) apply in relation to a T&S administration order as they apply in relation to an energy administration order within the meaning given by section 154(1) of that Act, but with the modifications set out in subsections (2) to (4). 25
- (2) In the application of those provisions generally – 30
 - (a) for “energy administration”, in each place where it occurs, substitute “transport and storage administration”;
 - (b) for “energy administrator”, in each place where it occurs, substitute “T&S administrator”;
 - (c) for “Great Britain”, in each place it occurs (other than paragraphs 4(2)(e) and 11(4) and (7) of Schedule 21), substitute “Great Britain or a relevant controlled place”; 35
 - (d) for “a protected energy company”, in each place where it occurs, substitute “a T&S company”.
- (3) In the application of Schedule 20 – 40
 - (a) in paragraph 32(1)(d), for the words from ““energy administration application”” to “Energy Act 2004” substitute ““transport and storage

- administration application” means an application to the court for a transport and storage administration order under Chapter 3 of Part 3 of the Energy Act 2004, as applied by section 44 of the Energy Act 2022”;
- (b) in paragraph 32(1)(e), for “section 155 of the Energy Act 2004” substitute “section 43 of the Energy Act 2022”; 5
 - (c) in paragraph 36, for “section 154(4) of this Act” substitute “section 42(4) of the Energy Act 2022”;
 - (d) in paragraph 43, after “the Energy Act 2004” insert “and section 44 of the Energy Act 2022”; 10
 - (e) in paragraph 44(5), after “the Energy Act 2004” insert “and section 44 of the Energy Act 2022”;
 - (f) in paragraph 45, after “section 157(1)(e) of this Act” insert “as applied by section 44 of the Energy Act 2022”;
 - (g) omit paragraph 46 (but see section 48 of this Act); 15
 - (h) in paragraph 47, after “Part 1 of this Schedule” insert “and section 44 of the Energy Act 2022”.
- (4) In the application of Schedule 21 –
- (a) for “an energy transfer scheme”, in each place where it occurs, substitute “a T&S transfer scheme”; 20
 - (b) for “old energy company”, in each place where it occurs, substitute “old T&S company”;
 - (c) for “new energy company”, in each place where it occurs, substitute “new T&S company”;
 - (d) in paragraph 1(b), for “section 155(3)” substitute “section 43(3) of the Energy Act 2022”; 25
 - (e) in paragraph 3(1), for “an “energy transfer scheme”” substitute “a “T&S transfer scheme””;
 - (f) in paragraphs 3(8) and 9(6), for “GEMA” substitute “–
 - (a) GEMA, 30
 - (b) the Health and Safety Executive,
 - (c) the Oil and Gas Authority,
 - (e) the appropriate devolved authorities (if any), and
 - (g) such other persons as the Secretary of State considers appropriate.”; 35
 - (g) in paragraph 5, after sub-paragraph (4) insert –
 - “(5) This paragraph also applies in relation to any licence or permit that the relevant licence mentioned in sub-paragraph (1) requires its holder to hold as it applies in relation to the relevant licence.”; 40
 - (h) in paragraphs 6(3) and 11(2), for “the energy transfer scheme” substitute “the T&S transfer scheme”;
 - (i) in paragraph 12, for “section 155” substitute “section 43 of the Energy Act 2022”;

- (j) after paragraph 13 insert—
- “14 For the purposes of paragraphs 3(8)(e) and 9(6)(e) the “appropriate devolved authorities” are—
- (a) the Welsh Ministers, if provision making the scheme or (as the case may be) modification would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006);
 - (b) the Scottish Ministers, if provision making the scheme or (as the case may be) modification would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament.”
- (5) Sections 171 and 196 of the Energy Act 2004 (interpretation) apply for the purposes of the application by subsection (1) of the provisions mentioned in that subsection, but with the modifications set out in subsection (6).
- (6) In the application of section 171(1)—
- (a) insert, at the appropriate places, the following definitions—
 - ““objective of the transport and storage administration” is to be construed in accordance with section 43 of the Energy Act 2022;”;
 - ““relevant controlled place” has the meaning give by section 42(5) of the Energy Act 2022;”;
 - ““T&S company” has the meaning given by section 42(2) of the Energy Act 2022;”;
 - ““transport and storage administration order” has the meaning given by section 42(1) of the Energy Act 2022;”;
 - ““transport and storage administration rules” means the rules made under section 411 of the 1986 Act by virtue of section 159(3) of this Act, for the purpose of giving effect to this Chapter as applied by section 44 of the Energy Act 2022;”;
 - (b) for the definition of “energy administrator” substitute—
 - ““T&S administrator” has the meaning given by section 49 of the Energy Act 2022;”;
 - (c) for the definition of “relevant licence” substitute—
 - ““relevant licence” means a licence under section 7 of the Energy Act 2022.”

45 Conduct of administration, transfer schemes etc

In section 159(3) of the Energy Act 2004 (conduct of administration, transfer schemes, etc under Chapter 3 of Part 3 of that Act), for “or section 33 of the

Nuclear Energy (Financing) Act 2022” substitute “, section 33 of the Nuclear Energy (Financing) Act 2022 or section 44 of the Energy Act 2022”.

Licence modifications

46 Modification of conditions of licences

- | | | |
|-----|--|----|
| (1) | The Secretary of State may modify the conditions of a T&S company’s licence so that they include— | 5 |
| | (a) conditions relating to the recovery of amounts owed to the Secretary of State by the T&S company by virtue of, or otherwise relating to, financial assistance given by the Secretary of State while a T&S administration order is in force in relation to the T&S company; | 10 |
| | (b) conditions relating to raising of funds for the purpose of meeting of expenses arising by virtue of the order. | |
| (2) | The Secretary of State may exercise the power under subsection (1) only if a T&S administration order is in force in relation to the T&S company. | |
| (3) | Before making a modification under subsection (1), the Secretary of State must consult— | 15 |
| | (a) the economic regulator, | |
| | (b) the Oil and Gas Authority, | |
| | (c) the appropriate devolved authorities (if any), and | |
| | (d) such other persons as the Secretary of State considers appropriate. | 20 |
| (4) | The power to make modifications under subsection (1) includes power to make such incidental, consequential or transitional modifications as the Secretary of State considers necessary or expedient. | |
| (5) | In subsection (1)(a), “financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance. | 25 |
| (6) | For the purposes of subsection (3)(c), the “appropriate devolved authorities” are— | |
| | (a) the Welsh Ministers, if provision making the modification would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); | 30 |
| | (b) the Scottish Ministers, if provision making the modification would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. | 35 |

Powers to modify enactments

47 Modification under the Enterprise Act 2002

- (1) The power to modify or apply enactments conferred on the Secretary of State by each of the sections of the Enterprise Act 2002 mentioned in subsection (2) includes power to make such consequential modifications of this Chapter as the Secretary of State considers appropriate in connection with any other provision made under that section. 5
- (2) Those sections are –
- (a) sections 248 and 277 (amendments consequential on that Act); and
- (b) section 254 (power to apply insolvency law to foreign companies). 10
- (3) In section 170(1) of the Energy Act 2004 (modification of Chapter 3 of Part 3 of that Act under the Enterprise Act 2002), for “or section 33 of the Nuclear Energy (Finance) Act 2022” substitute “, section 33 of the Nuclear Energy (Finance) Act 2022 or section 44 of the Energy Act 2022”.

48 Power to make further modifications of insolvency legislation

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- (1) The Secretary of State may by regulations –
- (a) provide for insolvency legislation to apply in relation to any provision made by or under this Chapter;
- (b) make such modifications of insolvency legislation as the Secretary of State considers appropriate in relation to any provision made by or under this Chapter (including any insolvency legislation that is applied under paragraph (a)). 20
- (2) In relation to regulations under subsection (1), "insolvency legislation" means –
- (a) the Insolvency Act 1986,
- (b) Chapter 3 of Part 3 of the Energy Act 2004, and 25
- (c) any other provision that relates to insolvency, or makes provision by reference to anything that is or may be done under the Insolvency Act 1986, and is –
- (i) contained in an Act passed before this Act or in the same Session, or 30
- (ii) made under an Act before the regulations come into force.
- (3) Provision made under subsection (1) may amend this Chapter.
- (4) Regulations under this section are subject to the affirmative procedure.

Interpretation

49 Interpretation of Chapter 4

35

- (1) In this Chapter –

“business”, “member” and “property” have the same meanings as in the Insolvency Act 1986;

“company” means –

- (a) a company registered under the Companies Act 2006, or
- (b) an unregistered company;

5

“court”, in relation to a company, means the court –

- (a) having jurisdiction to wind up the company, or
- (b) that would have such jurisdiction apart from section 221(2) or 441(2) of the Insolvency Act 1986 (exclusion of winding up jurisdiction in case of companies having principal place of business in, or incorporated in, Northern Ireland);

10

“modification” includes omission, addition or alteration, and cognate expressions are to be construed accordingly;

“non-GB company” means a company incorporated outside Great Britain;

“objective of a transport and storage administration” is to be construed in accordance with section 43;

15

“subsidiary” and “wholly-owned subsidiary” have the meaning given by section 1159 of the Companies Act 2006;

“T&S administration order” (or “transport and storage administration order”) has the meaning given by section 42(1);

20

“T&S administrator” has the meaning given by section 42(2)(c) and is to be construed in accordance with subsection (2) of this section;

“T&S company” has the meaning given by section 42(2)(b);

“unregistered company” means a company that is not registered under the Companies Act 2006.

25

(2) In this Chapter references to the T&S administrator of a company –

- (a) include references to a person appointed under paragraph 91 or 103 of Schedule B1 to the Insolvency Act 1986, as applied by Part 1 of Schedule 20 to the Energy Act 2004 and section 44 of this Act to be the T&S administrator of that company, and

30

- (b) where two or more persons are appointed to be the T&S administrator of that company, are to be construed in accordance with the provision made under section 158(5) of the Energy Act 2004, as applied by section 44 of this Act.

CHAPTER 5

35

TRANSFER SCHEMES

50 Transfer schemes

(1) This section applies where –

- (a) a termination event has arisen in relation to a licence, and
- (b) the economic regulator has complied with its duties under section 17 in relation to the termination event.

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-
- (2) The Secretary of State may make a scheme for the transfer of designated property, rights or liabilities of the licence holder to a person falling within subsection (3), or two or more of those persons, with the objective of –
- (a) securing that the activities authorised by the licence continue in a manner which –
 - (i) is efficient and economical, and
 - (ii) ensures the safety and security of the transport and storage network, or the part of that network, to which the licence relates, or
 - (b) facilitating the cessation of the transportation and injection of carbon dioxide authorised by the licence and ensuring the safety and security of the transport and storage network, or the part of that network, to which the licence relates.
- (3) The persons to whom a scheme may transfer designated property, rights or liabilities are –
- (a) the Secretary of State;
 - (b) any person the Secretary of State considers to be an appropriate person to achieve the objective in subsection (2)(a) or (as the case may be) (b).
- (4) In determining whether a person is an appropriate person for the purposes of subsection (3)(b), the Secretary of State must take into account whether the person would be able to meet the conditions and requirements of any licence or permit that would be transferred to the person under the proposed scheme.
- (5) The Secretary of State may not make a scheme without the consent of –
- (a) the licence holder, and
 - (b) where the scheme would transfer designated property, rights and liabilities to a person or persons falling within subsection (3)(b), each such person.
- (6) In this section –
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
 - “termination event” has the meaning given by section 17.

51 Consultation in relation to transfers

- (1) If the Secretary of State proposes to make a scheme under section 50, the Secretary of State must consult the licence holder mentioned in section 50(2) (“the proposed transferor”) before making the scheme.
- (2) If the Secretary of State proposes to make a scheme under section 50 which transfers designated property, rights or liabilities to a person or persons falling within section 50(3)(b) (“the proposed transferee or transferees”), the Secretary of State must consult before making the scheme –
- (a) the proposed transferee or transferees, and
 - (b) where a proposed transferee is not a public authority –

- (i) the economic regulator,
 - (ii) the Health and Safety Executive,
 - (iii) the Oil and Gas Authority,
 - (iv) the appropriate devolved authorities (if any), and
 - (v) such other persons as the Secretary of State considers appropriate. 5
- (3) The matters on which the Secretary of State is to consult the proposed transferor, and the proposed transferee or transferees, must include the provision the proposed scheme should make.
- (4) The matters on which the Secretary of State is to consult a body or person falling within subsection (2)(b)(i) to (v) must include whether the proposed transferee is an appropriate person, or whether the proposed transferees are appropriate persons, for the purposes of section 50(3)(b). 10
- (5) For the purposes of subsection (2)(b)(iv) the “appropriate devolved authorities” are – 15
 - (a) the Welsh Ministers, if provision making the proposed scheme would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 20
 - (b) the Scottish Ministers, if provision making the proposed scheme would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (c) the Department for the Economy in Northern Ireland, if provision making the proposed scheme – 25
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998. 30
- (6) In this section, “designated” has the same meaning as in section 50.

52 Conduct of transfer schemes

Schedule 3 contains further provision about transfer schemes under section 50. 35

CHAPTER 6

MISCELLANEOUS AND GENERAL

53 Cooperation of storage licensing authority with economic regulator

- (1) In Chapter 3 of Part 1 of the Energy Act 2008 (storage of carbon dioxide), after section 34 insert— 5

“34A Cooperation with economic regulator

- (1) This section applies where a licence holder also holds a relevant licence.
- (2) The licensing authority who granted the licence to the licence holder must provide such assistance as the economic regulator may reasonably require in carrying out its functions in relation to the relevant licence. 10
- (3) The licensing authority must, in particular, inform the economic regulator if it becomes aware of—
- (a) circumstances that have arisen, or are likely to arise, in relation to the activities authorised by the licence which, in the opinion of the licensing authority, could affect the carrying on of activities authorised by the relevant licence; 15
 - (b) circumstances that have arisen, or are likely to arise, in which the licence or a storage permit granted under the licence may be terminated.
- (4) In this section— 20
- “economic regulator” has the same meaning as in Part 1 of the Energy Act 2022 (see section 55 of that Act);
 - “relevant licence” means a licence under section 7 of the Energy Act 2022;
 - “storage permit” means a storage permit within the meaning of— 25
 - (a) regulation 1(3) of the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221), or
 - (b) regulation 1(3) of the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 (S.S.I. 2011/24). 30

34B Information sharing with economic regulator

- (1) A licensing authority may provide information relating to a licence or a storage permit granted under a licence to the economic regulator for the purpose of enabling or facilitating the exercise of the economic regulator’s functions in relation to a relevant licence. 35
- (2) Except as provided by subsection (3), the disclosure of information under this section does not breach—
- (a) any obligation of confidence owed by the person making the disclosure, or

- (b) any other restriction on the disclosure of information (however imposed).
- (3) This section does not authorise or require a disclosure of information if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, the power conferred by subsection (1) is to be taken into account). 5
- (4) In this section –
“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
“economic regulator”, “relevant licence” and “storage permit” have the same meaning as in section 34A; 10
“information” includes advice.”
- (2) In section 8 of the Energy Act 2016 (matters to which the Oil and Gas Authority must have regard), in subsection (1), in the paragraph headed “Collaboration”, after “government of the United Kingdom” insert “, with the Gas and Electricity Markets Authority,”. 15

54 Amendments related to Part 1

Schedule 4 contains amendments related to this Part.

55 Interpretation of Part 1

- In this Part – 20
- “carbon dioxide stream” means a flow of substances that results from carbon dioxide capture processes;
- “CMA” means the Competition and Markets Authority;
- “contravention”, in relation to any direction, condition, requirement, regulation or order, includes any failure to comply with it and cognate expressions are to be construed accordingly; 25
- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- “economic regulator” has the meaning given by section 1(2);
- “enactment” includes – 30
- (a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);
- (b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru;
- (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament; 35
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
- (e) any retained direct EU legislation;
- “final order” has the meaning given by section 31(4); 40

| | |
|--|----|
| “financial year” means a financial year of the economic regulator; | |
| “functions” includes powers and duties; | |
| “geological formation” means a lithostratigraphical subdivision within which distinct rock layers can be found and mapped; | |
| “geological storage”, in relation to carbon dioxide, means storage of carbon dioxide streams in underground geological formations with a view to the permanent containment of carbon dioxide (and references to geological storage are to be read as including injection); | 5 |
| “grantor” has the meaning given by section 9(9); | |
| “licence” means a licence under section 7, and “licence holder” is to be interpreted accordingly; | 10 |
| “licensable activities” has the meaning given by section 1(10); | |
| “licensable means of transportation” has the meaning given by section 2(3); | |
| “modifications” includes additions, alterations and omissions and cognate expressions are to be construed accordingly; | 15 |
| “operates”, in relation to a site for the geological storage of carbon dioxide, is to be interpreted in accordance with section 2(9); | |
| “provisional order” has the meaning given by section 31(4); | |
| “transport and storage network” has the meaning given by section 1. | 20 |

PART 2

CARBON DIOXIDE CAPTURE, STORAGE ETC AND HYDROGEN PRODUCTION

CHAPTER 1

REVENUE SUPPORT CONTRACTS

Key definitions 25

56 Chapter 1: interpretation

- (1) In this Chapter –
- | | |
|---|----|
| “allocation body” has the meaning given by section 68(5)(d); | |
| “allocation notification” has the meaning given by section 70(3); | |
| “carbon capture allocation body” has the meaning given by section 68(5)(b); | 30 |
| “carbon capture counterparty” has the meaning given by section 63(4); | |
| “carbon capture entity” has the meaning given by section 63(8); | |
| “carbon capture revenue support contract” has the meaning given by section 63(2); | 35 |
| “electricity supplier” means a person who holds a licence under – | |
| (a) section 6(1)(d) of the Electricity Act 1989, or | |
| (b) Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)); | |

- “eligible carbon capture entity” is to be interpreted in accordance with regulations by virtue of section 63(3);
- “eligible low carbon hydrogen producer” is to be interpreted in accordance with regulations by virtue of section 61(3);
- “gas shipper” means a person who holds a licence under section 7A(2) of the Gas Act 1986; 5
- “gas supplier” means a person who holds a licence under –
- (a) section 7A(1) of the Gas Act 1986, or
 - (b) Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)); 10
- “hydrogen levy administrator” has the meaning given by section 65(6);
- “hydrogen production allocation body” has the meaning given by section 68(5)(a);
- “hydrogen production counterparty” has the meaning given by section 61(4); 15
- “hydrogen production revenue support contract” has the meaning given by section 61(2);
- “low carbon hydrogen producer” has the meaning given by section 61(8);
- “relevant market participant” has the meaning given by section 66(8);
- “revenue support contract” has the meaning given by section 57(2); 20
- “revenue support counterparty” has the meaning given by section 58(6);
- “revenue support regulations” has the meaning given by section 57(4);
- “transport and storage counterparty” has the meaning given by section 59(3);
- “transport and storage revenue support contract” has the meaning given by section 59(2). 25

- (2) In this Chapter references to “allocating” a hydrogen production revenue support contract or carbon capture revenue support contract to a person are to be interpreted in accordance with section 68(5).

Provision of revenue support under certain contracts 30

57 Revenue support contracts

- (1) The Secretary of State may by regulations make provision about revenue support contracts (including the funding of liabilities and costs in relation to such contracts).
- (2) In this Chapter “revenue support contract” means – 35
- (a) a transport and storage revenue support contract (see section 59(2)),
 - (b) a hydrogen production revenue support contract (see section 61(2)), or
 - (c) a carbon capture revenue support contract (see section 63(2)).
- (3) The provision made by this Chapter is without prejudice to the generality of subsection (1). 40

-
- (4) In this Part “revenue support regulations” means regulations under this section.
- (5) Revenue support regulations may –
- (a) make different provision for different cases or circumstances or for different purposes; 5
 - (b) provide for exemptions or other exceptions to any requirement imposed by the regulations.
- (6) Revenue support regulations may –
- (a) include incidental, supplementary or consequential provision;
 - (b) make transitory or transitional provision or savings. 10
- (7) Revenue support regulations may confer any function on any person.
- (8) Revenue support regulations may provide for a function conferred on a person to be exercisable on that person’s behalf by another person.
- (9) Regulations of any of the following kinds are subject to the affirmative procedure – 15
- (a) the first revenue support regulations that make (with or without other provision) provision falling within any of sections 66, 67, 72, 73, 76 or 77;
 - (b) revenue support regulations that make (with or without other provision) provision falling within any of sections 58(2), 60(3), 61(3), 62(2), 63(3), 64(2), 70, 71 or 75(4). 20
- (10) Any other revenue support regulations are subject to the negative procedure.
- (11) If, apart from this subsection, a draft of an instrument containing revenue support regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument. 25

Duties of revenue support counterparty

58 Duties of revenue support counterparty

- (1) A revenue support counterparty must act in accordance with – 30
- (a) any direction given by the Secretary of State by virtue of this Chapter;
 - (b) any provision included in revenue support regulations.
- (2) Revenue support regulations may make provision –
- (a) to require a revenue support counterparty to enter into arrangements or to offer to contract for purposes connected to a revenue support contract; 35
 - (b) specifying things that a revenue support counterparty may or must do, or things that a revenue support counterparty may not do;

- (c) conferring on the Secretary of State further powers to direct a revenue support counterparty to do, or not to do, things specified in the regulations or the direction.
- (3) The provision that may be made by virtue of subsection (2)(b) or (c) includes provision requiring consultation with, or the consent of, the Secretary of State in relation to –
 - (a) the determination of an application for a modification agreement under section 73;
 - (b) the enforcement of obligations under a revenue support contract;
 - (c) a variation or termination of a revenue support contract;
 - (d) the settlement or compromise of a claim under a revenue support contract;
 - (e) the conduct of legal proceedings relating to a revenue support contract;
 - (f) the exercise of rights under a revenue support contract.
- (4) A revenue support counterparty must exercise the functions conferred by or by virtue of this Chapter so as to ensure that it can meet its liabilities under any revenue support contract to which it is a party.
- (5) Revenue support regulations must include such provision as the Secretary of State considers necessary so as to ensure that a transport and storage counterparty, hydrogen production counterparty or carbon capture counterparty can meet its liabilities under any transport and storage revenue support contract, hydrogen production revenue support contract or (as the case may be) carbon capture revenue support contract to which it is a party.
- (6) In this Chapter “revenue support counterparty” means –
 - (a) a transport and storage counterparty (see section 59(3)),
 - (b) a hydrogen production counterparty (see section 61(4)), or
 - (c) a carbon capture counterparty (see section 63(4)).

Carbon dioxide transport and storage

59 Designation of transport and storage counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for transport and storage revenue support contracts.
- (2) A “transport and storage revenue support contract” is a contract in relation to which both the following paragraphs apply –
 - (a) the contract is between a transport and storage counterparty and the holder of a licence under section 7;
 - (b) the contract was entered into by a transport and storage counterparty in pursuance of a direction given to it under section 60(1).
- (3) A person designated under subsection (1) is referred to in this Chapter as a “transport and storage counterparty”.

- (4) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (5) The Secretary of State may exercise the power to designate so that more than one designation has effect under subsection (1), but only if the Secretary of State considers it necessary for the purposes of ensuring that— 5
- (a) liabilities under a transport and storage revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a transport and storage revenue support contract continue to operate, or
 - (c) directions given to a transport and storage counterparty continue to have effect. 10
- (6) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under section 79 to ensure the transfer of all rights and liabilities under any transport and storage revenue support contract to which the person who has ceased to be a transport and storage counterparty was a party. 15

60 Direction to offer to contract

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a transport and storage counterparty to offer to contract with an eligible person specified in the direction, on terms specified in the direction. 20
- (2) The following are “eligible” persons for the purposes of this section—
- (a) the holder of a licence under section 7, or
 - (b) a person who is to be granted a licence under section 7 (and has been notified of that by the Secretary of State or the Gas and Electricity Markets Authority). 25
- (3) Revenue support regulations may make further provision about a direction under this section and in particular about—
- (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction. 30

Hydrogen production

61 Designation of hydrogen production counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for hydrogen production revenue support contracts.
- (2) A “hydrogen production revenue support contract” is a contract in relation to which both the following paragraphs apply— 35
- (a) the contract is between a hydrogen production counterparty and an eligible low carbon hydrogen producer;

- (b) the contract was entered into by a hydrogen production counterparty in pursuance of a direction given to it under section 62(1) or a notification given to it under section 70(1).
- (3) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a low carbon hydrogen producer. 5
- (4) A person designated under subsection (1) is referred to in this Chapter as a “hydrogen production counterparty”.
- (5) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (6) The Secretary of State may exercise the power of designation so that more than one designation has effect under subsection (1), but only if the Secretary of State considers it necessary for the purposes of ensuring that— 10
 - (a) liabilities under a hydrogen production revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a hydrogen production revenue support contract continue to operate, or 15
 - (c) directions given to a hydrogen production counterparty continue to have effect.
- (7) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under section 79 to ensure the transfer of all rights and liabilities under any hydrogen production revenue support contract to which the person who has ceased to be a hydrogen production counterparty was a party. 20
- (8) In this Chapter—
 - “low carbon hydrogen producer” means a person who carries on (or is to carry on) activities of producing hydrogen which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases; 25
 - “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008. 30

62 Direction to offer to contract

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a hydrogen production counterparty to offer to contract with an eligible low carbon hydrogen producer specified in the direction, on terms specified in the direction. 35
- (2) Revenue support regulations may make further provision about a direction under this section and in particular about—
 - (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction.
- (3) Provision falling within subsection (2) may include provision for— 40

- (a) the determination of a matter on a competitive basis,
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations. 5
- (4) For the meaning of “eligible” in relation to a low carbon hydrogen producer see section 61(3).

Carbon capture

63 Designation of carbon capture counterparty

- (1) The Secretary of State may by notice given to a person designate the person to be a counterparty for carbon capture revenue support contracts. 10
- (2) A “carbon capture revenue support contract” is a contract in relation to which both the following paragraphs apply –
 - (a) the contract is between a carbon capture counterparty and an eligible carbon capture entity; 15
 - (b) the contract was entered into by a carbon capture counterparty in pursuance of a direction given to it under section 64(1) or a notification given to it under section 70(2).
- (3) Revenue support regulations must make provision for determining the meaning of “eligible” in relation to a carbon capture entity. 20
- (4) A person designated under subsection (1) is referred to in this Chapter as a “carbon capture counterparty”.
- (5) A designation may be made only with the consent of the person designated (except where that person is the Secretary of State).
- (6) The Secretary of State may exercise the power of designation so that more than one designation has effect under subsection (1), but only if the Secretary of State considers it necessary for the purposes of ensuring that –
 - (a) liabilities under a carbon capture revenue support contract are met,
 - (b) arrangements entered into for purposes connected to a carbon capture revenue support contract continue to operate, or 30
 - (c) directions given to a carbon capture counterparty continue to have effect.
- (7) As soon as reasonably practicable after a designation ceases to have effect, the Secretary of State must make one or more transfer schemes under section 79 to ensure the transfer of all rights and liabilities under any carbon capture revenue support contract to which the person who has ceased to be a carbon capture counterparty was a party. 35
- (8) In this section –

“carbon capture entity” means a person who carries on (or is to carry on) activities of capturing carbon dioxide (or any substance consisting primarily of carbon dioxide) that has been produced by commercial or industrial activities, with a view to the storage of carbon dioxide;
“storage”, in relation to carbon dioxide, means any storage with a view to the permanent containment of carbon dioxide.

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64 Direction to offer to contract

- (1) The Secretary of State may, in accordance with any provision made by revenue support regulations, direct a carbon capture counterparty to offer to contract with an eligible carbon capture entity specified in the direction, on terms specified in the direction. 10
- (2) Revenue support regulations may make further provision about a direction under this section and in particular about—
 - (a) the circumstances in which a direction may or must be given;
 - (b) the terms that may or must be specified in a direction. 15
- (3) Provision falling within subsection (2) may include provision for—
 - (a) the determination of a matter on a competitive basis,
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations. 20
- (4) For the meaning of “eligible” in relation to a carbon capture entity see section 63(3).

Hydrogen levy

65 Appointment of hydrogen levy administrator 25

- (1) The Secretary of State may by regulations appoint a person to carry out functions with respect to obligations of relevant market participants under section 66.
- (2) The Secretary of State may exercise the power under subsection (1) so that more than one appointment has effect under that subsection at the same time. 30
- (3) An appointment may be made only with the consent of the person appointed (except where that person is the Secretary of State).
- (4) An appointment ceases to have effect if the Secretary of State by regulations revokes the appointment.
- (5) As soon as reasonably practicable after a person’s appointment under subsection (1) ceases to have effect, the Secretary of State must make one or more transfer schemes under section 79 to ensure the transfer of any rights and liabilities of that person that the Secretary of State considers appropriate. 35

- (6) A person appointed under subsection (1) is called a “hydrogen levy administrator”.

66 Obligations of relevant market participants

- (1) Revenue support regulations may make provision for relevant market participants (see subsection (8)) to make payments to a hydrogen levy administrator for the purpose of enabling – 5
- (a) a hydrogen production counterparty to make payments under a hydrogen production revenue support contract or in respect of liabilities incurred in connection with the contract;
 - (b) a counterparty to a transport and storage revenue support contract to make payments under that contract, or in respect of liabilities incurred in connection with that contract, for a purpose connected with hydrogen production revenue support contracts. 10
- (2) Revenue support regulations may make provision for relevant market participants to make payments to a hydrogen levy administrator for the purpose of enabling the hydrogen levy administrator – 15
- (a) to meet or reimburse such descriptions of relevant costs (whether of the hydrogen levy administrator or another person) as the Secretary of State considers appropriate;
 - (b) to hold sums in reserve; 20
 - (c) to cover losses in the case of insolvency or default of a relevant market participant.
- (3) Revenue support regulations may make provision about the method of calculating or determining amounts that are to be paid by a hydrogen levy administrator for a purpose mentioned in subsection (1) or (2), including provision for adjustments or apportionments in cases where an amount required to be paid by a hydrogen levy administrator for such a purpose has not been paid in full. 25
- (4) Revenue support regulations may make provision to require relevant market participants to provide financial collateral to a hydrogen levy administrator (whether in cash, securities or any other form). 30
- (5) Revenue support regulations that make provision by virtue of subsection (1) for the payment of sums by relevant market participants must impose on a hydrogen levy administrator a duty in relation to the collection of such sums.
- (6) In subsection (1) a reference to liabilities incurred in connection with a revenue support contract includes liabilities incurred in connection with a contract entered into by the counterparty concerned for a purpose related to that contract. 35
- (7) In subsection (2) “relevant costs” means any costs in connection with the performance of any function conferred by or by virtue of this Chapter. 40

- (8) In this Chapter “relevant market participants” means one or more descriptions of persons specified in revenue support regulations, but no description of relevant market participants may include persons other than –
- (a) gas suppliers;
 - (b) electricity suppliers; 5
 - (c) gas shippers.
- (9) Revenue support regulations may make provision about eligibility for exemptions from obligations imposed on relevant market participants by regulations within subsections (1) to (4).

67 Functions of hydrogen levy administrator 10

- (1) Revenue support regulations may make provision –
- (a) specifying things that a hydrogen levy administrator may or must do, or things that a hydrogen levy administrator may not do;
 - (b) conferring on the Secretary of State powers to direct a hydrogen levy administrator to do, or not to do, things specified in the regulations or the direction. 15
- (2) The following provisions of this section are without prejudice to the generality of subsection (1)(a).
- (3) Revenue support regulations may make provision –
- (a) for a hydrogen levy administrator to calculate or determine, in accordance with such criteria as may be provided for by or under the regulations, amounts that are owed by a relevant market participant or are to be provided as financial collateral by a relevant market participant; 20
 - (b) for the issuing of notices by a hydrogen levy administrator to require the payment or provision of such amounts; 25
 - (c) for the provision of copies of such notices to persons specified in the regulations or the publication of such notices;
 - (d) for the enforcement of obligations imposed by or under the regulations (including provision about interest on late payments and imposing financial penalties); 30
 - (e) about the resolution of disputes, including provision about arbitration or appeals (which may in particular include provision for the person conducting an arbitration or determining an appeal to order the payment of costs or expenses or compensation); 35
 - (f) for a hydrogen levy administrator to determine the form and terms of any financial collateral;
 - (g) for a hydrogen levy administrator to hold sums in reserve.
- (4) Provision made by virtue of subsection (3)(a) or section 66(3) or (9) may provide for anything that is to be calculated or determined under the regulations to be calculated or determined –
- (a) by such persons, 40

- (b) in accordance with such procedure, and
 - (c) by reference to such matters and to the opinion of such persons, as may be specified in the regulations.
- (5) Any sum that –
- (a) a relevant market participant is required by virtue of revenue support regulations to pay to a hydrogen levy administrator, and 5
 - (b) has not been paid by the date on which it is required by virtue of revenue support regulations to be paid,
- may be recovered from the relevant market participant by the hydrogen levy administrator as a civil debt due to it. 10
- (6) Revenue support regulations may make provision about the application of sums held by a hydrogen levy administrator.
- (7) The provision that may be made by virtue of subsection (6) includes provision that sums are to be paid, or not to be paid, into the Consolidated Fund.

Allocation of contracts 15

68 Power to appoint allocation bodies

- (1) The Secretary of State may by regulations appoint –
- (a) a person to carry out functions in connection with the allocation of hydrogen production revenue support contracts;
 - (b) a person to carry out functions in connection with the allocation of carbon capture revenue support contracts. 20
- (2) An appointment may be made only with the consent of the person appointed (except where that person is the Secretary of State).
- (3) An appointment ceases to have effect if –
- (a) the Secretary of State by regulations revokes the appointment, or 25
 - (b) the person withdraws consent.
- (4) Regulations under subsection (1) may make provision with regard to the cessation of an appointment, including –
- (a) provision requiring a person appointed under subsection (1) to give a period of notice no shorter than a period specified in the regulations when withdrawing their consent to designation, or otherwise restricting or subjecting to conditions a person’s power under subsection (3) to withdraw consent; 30
 - (b) provision enabling a person who has ceased to be appointed under subsection (1) to continue to be treated as if they were so appointed, including provision about the circumstances in which, and the period for which, such a person may be so treated. 35
- (5) In this Chapter –

- (a) a person appointed under subsection (1)(a) is called a “hydrogen production allocation body”;
 - (b) a person appointed under subsection (1)(b) is called a “carbon capture allocation body”;
 - (c) references to “allocating” a hydrogen production revenue support contract or carbon capture revenue support contract to a person are to specifying the person in a notification under section 70(1) or (2) (and references to the “allocation” of such a contract are to be interpreted accordingly); 5
 - (d) “allocation body” means a hydrogen production allocation body or a carbon capture allocation body. 10
- (6) Regulations under this section, other than regulations under subsection (3)(a), are subject to the negative procedure.

69 Standard terms of revenue support contracts

- (1) The Secretary of State may issue standard terms and conditions (“standard terms”) of – 15
 - (a) hydrogen production revenue support contracts;
 - (b) carbon capture revenue support contracts.
- (2) The Secretary of State may from time to time revise standard terms.
- (3) Standard terms issued or revised under this section must be in accordance with provision made in revenue support regulations. 20
- (4) The Secretary of State must publish standard terms as issued or revised under this section.
- (5) In publishing standard terms the Secretary of State may designate particular standard terms as terms that may not be modified under section 73. 25
- (6) Different standard terms may be issued for different categories of hydrogen production revenue support contract or carbon capture revenue support contract.

70 Allocation notifications

- (1) A hydrogen production allocation body may, in accordance with provision made by revenue support regulations, give a notification to a hydrogen production counterparty specifying – 30
 - (a) an eligible low carbon hydrogen producer, and
 - (b) such other information as may be required for the purpose of making an offer under section 72 to contract with that low carbon hydrogen producer. 35
- (2) A carbon capture allocation body may, in accordance with provision made by revenue support regulations, give a notification to a carbon capture counterparty specifying –

- (a) an eligible carbon capture entity, and
 - (b) such other information as may be required for the purpose of making an offer under section 72 to contract with that carbon capture entity.
- (3) A notification given under subsection (1) or (2) is called an “allocation notification”. 5
- (4) Revenue support regulations may make further provision about allocation notifications and in particular provision about—
- (a) the circumstances in which an allocation notification may or must be given;
 - (b) the kinds of information that must be specified in an allocation notification in accordance with subsection (1)(b) or (2)(b); 10
 - (c) appeals against decisions not to give allocation notifications.

71 Allocation of contracts

- (1) Provision that may be made in revenue support regulations for the purposes of section 70(1) and (2) includes provision about how determinations are to be made as regards— 15
- (a) which eligible low carbon hydrogen producer a hydrogen production revenue support contract is to be allocated to;
 - (b) which eligible carbon capture entity a carbon capture revenue support contract is to be allocated to. 20
- (2) Provision made by revenue support regulations falling within subsection (1) may include—
- (a) provision conferring power on the Secretary of State to make rules (an “allocation framework”) about the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts; 25
 - (b) provision for different periods within which hydrogen production revenue support contracts or carbon capture revenue support contracts are to be allocated (“allocation rounds”);
 - (c) provision for different allocation frameworks to apply in respect of different allocation rounds; 30
 - (d) provision for the publication of allocation frameworks;
 - (e) provision about matters in relation to which provision may or must be made in an allocation framework.
- (3) Provision made by revenue support regulations falling within subsection (2) may impose requirements on the Secretary of State, including in particular— 35
- (a) requirements as to the giving of notice before an allocation round is commenced;
 - (b) restrictions on the circumstances in which amendments may be made during an allocation round to an allocation framework or to any other matter relevant to an allocation round (including any amount by 40

reference to which a limit on the contracts allocated during the round is to be determined).

- (4) An allocation framework may –
- (a) confer functions on an allocation body with respect to the allocation of hydrogen production revenue support contracts or carbon capture revenue support contracts; 5
 - (b) specify targets to be met or taken into account by an allocation body in giving allocation notifications by virtue of section 70, including targets relating to –
 - (i) the process used for producing hydrogen or for capturing carbon dioxide; 10
 - (ii) outputs or capacity (whether in respect of hydrogen production or capture of carbon dioxide);
 - (iii) the geographical location of an applicant’s activities;
 - (c) make any provision that may be made by regulations by virtue of subsection (3). 15
- (5) An allocation framework may include provision for –
- (a) the determination of a matter on a competitive basis;
 - (b) calculations or determinations to be made under the framework, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the framework. 20
- (6) An allocation framework may –
- (a) include incidental, supplementary and consequential provision;
 - (b) make transitory or transitional provision and savings; 25
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions.
- (7) Any power conferred by virtue of subsection (2) to make an allocation framework includes a power to amend, add to or remove an allocation framework. 30
- (8) Subsections (4) to (7) are subject to any provision contained in revenue support regulations.

72 Duty to offer to contract following allocation

- (1) Where an allocation notification is given to a hydrogen production counterparty under section 70(1), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible low carbon hydrogen producer specified in the notification on – 35
- (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible low 40

carbon hydrogen producer for the purposes of the allocation notification (see section 73).

- (2) Where an allocation notification is given to a carbon capture counterparty under section 70(2), the counterparty must, in accordance with provision made by revenue support regulations, offer to contract with the eligible carbon capture entity specified in the notification on – 5
- (a) standard terms, or
 - (b) standard terms as modified in accordance with any modification agreement entered into between the counterparty and the eligible carbon capture entity for the purposes of the allocation notification (see section 73). 10
- (3) Revenue support regulations may make further provision about an offer to contract made under this section, including provision about –
- (a) how a hydrogen production counterparty or carbon capture counterparty is to apply or complete standard terms in relation to the offer in accordance with information specified in an allocation notification; 15
 - (b) the time within which the offer must be made;
 - (c) how the eligible low carbon hydrogen producer or eligible carbon capture entity to whom the offer is made may enter into a hydrogen production revenue support contract or (as the case may be) carbon capture revenue support contract as a result of the offer; 20
 - (d) what is to happen if the eligible low carbon hydrogen producer or eligible carbon capture entity does not enter into such a contract as a result of the offer. 25
- (4) In this section, “standard terms”, in relation to an allocation notification, means standard terms published under section 69, determined in accordance with revenue support regulations as the standard terms that are to apply in relation to the allocation notification.

73 Modification of standard terms 30

- (1) This section applies where a person wishes to be specified as an eligible low carbon hydrogen producer, or an eligible carbon capture entity, in an allocation notification (“the potential allocation notification”).
- (2) A hydrogen production counterparty or (as the case requires) carbon capture counterparty and the person may, in accordance with provision made by revenue support regulations, agree to modify standard terms for the purposes of any offer that would be required under section 72 if the potential allocation notification is given (a “modification agreement”). 35
- (3) A hydrogen production counterparty or carbon capture counterparty may enter into a modification agreement providing for the modification of any particular standard term only if – 40
- (a) the counterparty is satisfied that –

- (i) the effect of the modification is minor, and
 - (ii) the modification is necessary; and
 - (b) the standard term has not been designated under section 69(5) as a term that may not be modified under this section.
- (4) Revenue support regulations may make further provision about modification agreements, including – 5
 - (a) the circumstances in which a person may make an application for a modification agreement;
 - (b) the time by which an application must be made;
 - (c) the procedure to be followed, and the information to be given, by the person in making an application; 10
 - (d) how a hydrogen production counterparty or carbon capture counterparty is to determine an application (including how it is to determine whether the effect of a modification is minor and whether it is necessary); 15
 - (e) the time by which determinations must be made;
 - (f) the form of modification agreements.
- (5) Provision made by virtue of subsection (4)(d) may include provision under which the counterparty may make alternative proposals for modifications in response to an application. 20
- (6) In this section “modify” includes add to, alter or omit, and “modification” is to be read accordingly.

74 Sections 70 to 73: supplementary

- Provision made by regulations by virtue of any of sections 70 to 73 may include provision for – 25
- (a) the determination of a matter on a competitive basis;
 - (b) calculations or determinations to be made under the regulations, including by such persons, in accordance with such procedure and by reference to such matters and to the opinion of such persons, as may be specified in the regulations. 30

General provision about counterparties

75 Further provision about designations

- (1) A designation under section 59, 61, or 63 ceases to have effect if –
 - (a) the Secretary of State revokes the designation by notice given to the person designated (in which case the designation ends on the date specified in the notice), or 35
 - (b) the person withdraws consent to the designation by giving not less than 3 months’ notice in writing to the Secretary of State.

- (2) At any time after the first designation under section 59, 61 or 63 has effect, the Secretary of State must, except where the Secretary of State considers it unnecessary or not reasonably practicable to do so, exercise the power to designate so as to ensure that at least one designation has effect under that section. 5
- (3) The Secretary of State must publish a notice given to a person under –
- (a) section 59(1), 61(1), or 63(1), or
 - (b) subsection (1)(a).
- (4) Revenue support regulations may make provision enabling a person who has ceased to be a transport and storage counterparty, hydrogen production counterparty or carbon capture counterparty to continue to be treated as such a counterparty, including provision about the circumstances in which, and the period for which, such a person may be so treated. 10

76 Application of sums held by a revenue support counterparty

- (1) Revenue support regulations may make provision for apportioning sums – 15
- (a) received by a revenue support counterparty from a hydrogen levy administrator under provision made by virtue of section 66, or
 - (b) received by a revenue support counterparty under a revenue support contract,
- in circumstances where the revenue support counterparty is unable to fully meet its liabilities under a revenue support contract. 20
- (2) The provision that may be made by virtue of subsection (1) includes provision about the meaning of “unable to fully meet its liabilities under a revenue support contract”.
- (3) In making provision by virtue of subsection (1), the Secretary of State must have regard to the principle that sums should be apportioned in proportion to the amounts that are owed. 25
- (4) Revenue support regulations may make provision about the application of sums held by a revenue support counterparty.
- (5) The provision that may be made by virtue of subsection (4) includes provision that sums are to be paid, or not to be paid, into the Consolidated Fund. 30

Information and advice

77 Information and advice

- (1) Revenue support regulations may make provision about the provision and publication of information and advice. 35
- (2) The provision that may be made by virtue of subsection (1) includes provision –

- (a) for the Secretary of State to require a revenue support counterparty, to provide advice to the Secretary of State or any other person, or persons of any description, specified in the regulations;
 - (b) for the Secretary of State to require any party to a revenue support contract to provide information to the Secretary of State or any other person, or persons of any description, specified in the regulations; 5
 - (c) for the Secretary of State to require any of the following to provide information or advice to the Secretary of State or any other person, or persons of any description, specified in the regulations –
 - (i) a hydrogen levy administrator; 10
 - (ii) an allocation body;
 - (iii) the Gas and Electricity Markets Authority;
 - (iv) any other person or description of persons specified in the regulations;
 - (d) for a hydrogen levy administrator to require – 15
 - (i) a revenue support counterparty,
 - (ii) an allocation body,
 - (iii) an electricity supplier,
 - (iv) a gas supplier,
 - (v) a gas shipper, or 20
 - (vi) any other person or description of persons specified in the regulations,to provide information to it;
 - (e) for an allocation body to require any party to a hydrogen production revenue support contract or carbon capture revenue support contract to provide information to it; 25
 - (f) for the classification and protection of confidential or sensitive information;
 - (g) for the enforcement of any requirement imposed by virtue of paragraphs (a) to (f). 30
- (3) The prohibition on disclosure of information by –
- (a) section 105(1) of the Utilities Act 2000;
 - (b) Article 63(1) of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6));
- does not apply to a disclosure required by virtue of this section. 35

Consultation

78 Consultation

- (1) Before making revenue support regulations the Secretary of State must consult –

-
- (a) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;
 - (b) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 5
 - (c) the Department for the Economy in Northern Ireland, if the regulations contain provision that – 10
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998; 15
 - (d) such other persons as the Secretary of State considers appropriate.
- (2) Before publishing standard terms under section 69 the Secretary of State must consult such persons as the Secretary of State considers it appropriate to consult. 20
 - (3) A requirement under this section to consult may be satisfied by consultation before, as well as consultation after, the passing of this Act.

Transfer schemes

- 79 Transfer schemes** 25
- (1) The Secretary of State may make –
 - (a) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a revenue support counterparty to a person who is a revenue support counterparty;
 - (b) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a hydrogen levy administrator to a person who is a hydrogen levy administrator; 30
 - (c) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be a hydrogen levy administrator to the Secretary of State; 35
 - (d) one or more schemes for the transfer of designated property, rights or liabilities of a person who has ceased to be an allocation body to a person who is an allocation body.
 - (2) In this section –
 - “transferee” means – 40
 - (a) in a case within subsection (1)(a), the person who is a revenue support counterparty;

- (b) in a case within subsection (1)(b), the person who is a hydrogen levy administrator;
 - (c) in a case within subsection (1)(c), the Secretary of State;
 - (d) in a case within subsection (1)(d), the person who is an allocation body; 5
- “transferor” means the person who has ceased to be a revenue support counterparty, a hydrogen levy administrator or an allocation body (as the case may be).
- (3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme. 10
- (4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (5) A certificate by the Secretary of State that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact. 15
- (6) A scheme may make provision—
 - (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee;
 - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee; 20
 - (c) about the continuation of legal proceedings;
 - (d) for transferring property, rights or liabilities that could not otherwise be transferred or assigned; 25
 - (e) for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities; 30
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme;
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect; 35
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme;
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme. 40
- (7) Subsection (6)(b) does not apply to references in—

- (a) primary legislation, or
 - (b) an instrument made under primary legislation.
- (8) A scheme may contain provision for the payment of compensation by the Secretary of State to any person whose interests are adversely affected by it.
- (9) A transfer scheme may – 5
- (a) include incidental, supplementary or consequential provision;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different cases or circumstances or for different purposes;
 - (d) make provision subject to exceptions. 10
- (10) In this section –
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme;
 - “primary legislation” means – 15
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation;
 - “property” includes interests of any description;
 - “the transfer date” means a date specified by a scheme as the date on which the scheme is to have effect. 20

80 Modification of transfer schemes

- (1) The Secretary of State may modify a transfer scheme made under section 79, subject to subsection (2).
- (2) If a transfer under the scheme has taken effect, any modification under subsection (1) that relates to the transfer may be made only with the agreement of the transferor or transferee affected by the modification (or, where both the transferor and transferee are affected, with the agreement of both of them). 25
- (3) A modification takes effect from such date as the Secretary of State may specify (which may be the date when the original scheme came into effect). 30
- (4) In this section “transferor” and “transferee” have the same meaning as in section 79.

General

81 Shadow directors, etc

- (1) The Secretary of State is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as – 35
- (a) a person occupying the position of director in relation to a Chapter 1 entity;

- (b) a person in accordance with whose directions or instructions the directors of a Chapter 1 entity are accustomed to act;
 - (c) exercising any function of management in a Chapter 1 entity;
 - (d) a principal of a Chapter 1 entity.
- (2) An allocation body is not, by virtue of the exercise of a power conferred by or by virtue of this Chapter, to be regarded as—
- (a) a person occupying the position of director in relation to a revenue support counterparty;
 - (b) a person in accordance with whose directions or instructions the directors of a revenue support counterparty are accustomed to act;
 - (c) exercising any function of management in a revenue support counterparty;
 - (d) a principal of a revenue support counterparty.
- (3) In this section “Chapter 1 entity” means the following—
- (a) a revenue support counterparty;
 - (b) a hydrogen levy administrator;
 - (c) an allocation body.

CHAPTER 2

DECOMMISSIONING OF CARBON STORAGE INSTALLATIONS

Financing of costs of decommissioning etc 20

82 Financing of costs of decommissioning etc

- (1) The Secretary of State may make regulations about the financing of, and provision of security in relation to, decommissioning and legacy costs that have been, or are likely to be, incurred in relation to a carbon storage installation. 25
- (2) The following provisions of this section are without prejudice to the generality of subsection (1).
- (3) In this section “relevant licence holder” means a person who—
- (a) holds a licence under section 7, and
 - (b) is a person to whom a notice has been, or may be, given under section 29 of the Petroleum Act 1998 (preparation of abandonment programmes) in respect of a carbon storage installation. 30
- (4) Regulations under subsection (1) may—
- (a) require a relevant licence holder to provide the Secretary of State with estimates of decommissioning and legacy costs that are likely to be incurred in relation to the carbon storage installation mentioned in subsection (3)(b); 35
 - (b) make provision about the estimation of decommissioning and legacy costs in relation to a carbon storage installation, and about the manner

- in which such estimates are to be verified (which may include provision requiring verification by an independent third party);
- (c) require relevant licence holders to review estimates of decommissioning and legacy costs in relation to a carbon storage installation at times, or at intervals, specified in the regulations; 5
 - (d) make provision about the approval by the Secretary of State of estimates of such costs;
 - (e) provide for information specified, or of a description specified, in the regulations to be supplied to the Secretary of State by relevant licence holders at such intervals, or on such occasions, as may be prescribed by the regulations; 10
 - (f) require the Secretary of State to consult the Oil and Gas Authority or any other person specified in the regulations before exercising functions by virtue of paragraph (d).
- (5) In this section “decommissioning and legacy costs”, in relation to a carbon storage installation, means costs associated with— 15
- (a) measures proposed to be taken in connection with the decommissioning of the installation and any associated submarine pipelines;
 - (b) compliance with post-closure monitoring obligations;
 - (c) compliance with the obligation to provide the financial contribution to the Secretary of State or the Scottish Ministers (as the case may be) in accordance with regulation 10(5) of the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I. 2011/1483). 20
- (6) Regulations under subsection (1) may make provision—
- (a) requiring that security for the discharge of liabilities in respect of decommissioning and legacy costs in relation to a carbon storage installation must be provided by way of a fund established in accordance with the regulations and held under arrangements specified in the regulations; 25
 - (b) about the management of funds established and held as mentioned in paragraph (a); 30
 - (c) about payments to a relevant licence holder, or another person, from such funds;
 - (d) providing for payments from such funds to be subject to the approval of the Secretary of State; 35
 - (e) imposing on an appropriate authority functions with regard to—
 - (i) the monitoring and oversight of funds established and held as mentioned in paragraph (a);
 - (ii) the approval of any matter relating to such a fund.
- (7) This section is without prejudice to the breadth of subsection (4) of section 30 of the Energy Act 2008. 40
- (8) The Secretary of State must publish guidance about—
- (a) the preparation and content of estimates of decommissioning and legacy costs in relation to a carbon storage installation;

- (b) reviews of such estimates;
 - (c) the approval of such estimates.
- (9) Regulations under subsection (1) may require the Secretary of State to publish guidance about factors which it may be appropriate to consider in deciding whether or not to approve an estimate of decommissioning and legacy costs in relation to a carbon storage installation. 5
- (10) Guidance under or by virtue of this section may make different provision for different cases or circumstances.
- (11) In this section –
 - “appropriate authority” means the Secretary of State or the economic regulator; 10
 - “associated storage site”, in relation to a relevant licence holder, means the storage site associated with the carbon storage installation mentioned in subsection (3);
 - “carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008; 15
 - “compliance with post-closure monitoring obligations”, in relation to a relevant licence holder, means compliance with either of the following in respect of the associated storage site –
 - (a) paragraph 4(1)(a) of Schedule 1 to the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221); 20
 - (b) paragraph 13(2)(a) of the Storage of Carbon Dioxide (Licensing etc.) (Scotland) Regulations (S.S.I 2011/24);
 - “economic regulator” has the same meaning as in Part 1 (see section 55);
 - “storage site” has the same meaning as in – 25
 - (a) the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221), or
 - (b) the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 (S.S.I. 2011/24);
 - “submarine pipeline” has the same meaning as in Part 4 of the Petroleum Act 1998 (see section 45 of that Act). 30

83 Section 82: supplementary

- (1) Regulations under section 82(1) may make provision –
 - (a) enabling a relevant authority to charge fees to relevant licence holders in order to cover the costs of the exercise of the authority’s functions under the regulations; 35
 - (b) about how fees payable by virtue of the regulations are to be determined;
 - (c) about when fees payable by virtue of the regulations are to be paid.
- (2) Regulations under section 82(1) may make provision about the supplying of information, including – 40

- (a) provision for the Secretary of State to require any other person to supply information to the Secretary of State for the purposes of the Secretary of State’s functions under regulations under that section;
- (b) about the sharing by the Secretary of State with the Oil and Gas Authority or the economic regulator of information about funds established as mentioned in section 82(6)(a). 5
- (3) Regulations under section 82(1) may make provision about compliance with requirements imposed by or under the regulations, including –
- (a) provision imposing civil penalties;
- (b) provision making it an offence to contravene specified provisions of the regulations. 10
- (4) Where regulations under section 82(1) create an offence, they must also make provision as to the mode of trial and punishment of offences, but –
- (a) any provision as to punishment on summary conviction must not authorise imprisonment or, in the case of summary conviction in Scotland or Northern Ireland, a fine exceeding the statutory maximum; 15
- (b) any provision as to punishment on conviction on indictment must not authorise imprisonment for a term exceeding 2 years.
- (5) Regulations under section 82(1) may –
- (a) make different provision for different purposes; 20
- (b) create exceptions to any requirement imposed by the regulations.
- (6) Regulations under section 82(1) may confer any function on any person.
- (7) Regulations under section 82(1) may provide for a function conferred on a person to be exercisable on that person’s behalf by another person.
- (8) In this section – 25
- “economic regulator” has the same meaning as in Part 1 (see section 55);
- “relevant authority” means the Secretary of State, the economic regulator or the Oil and Gas Authority;
- “relevant licence holder” has the same meaning as in section 82.
- (9) Regulations under section 82(1) may make any amendments of – 30
- (a) the Storage of Carbon Dioxide (Licensing etc) Regulations 2010 (S.I. 2010/2221),
- (b) the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 (S.S.I. 2011/24), or
- (c) the Storage of Carbon Dioxide (Termination of Licences) Regulations 2011 (S.I. 2011/1483), 35
- that the Secretary of State considers appropriate in consequence of, or of provision made under, section 82 or this section.
- (10) Regulations under section 82(1) containing any of the following (with or without other provision) are subject to the affirmative procedure – 40
- (a) provision creating a criminal offence;

- (b) provision creating a civil penalty.
- (11) Any other regulations under section 82(1) are subject to the negative procedure.

Abandonment of carbon storage installations

- 84 Application of Part 4 of Petroleum Act 1998 in relation to carbon storage installations** 5
- (1) In section 30 of the Energy Act 2008 (abandonment of installations), in subsection (5), for “established or maintained” substitute “or has been maintained, or is intended to be or has been established,”.
- (2) The power of the Scottish Ministers under section 30(2)(b) of the Energy Act 2008 to modify Part 4 of the Petroleum Act 1998 in its application to certain carbon storage installations includes power to make any modifications of that Part of that Act (in its application to the installations in question) that the Scottish Ministers consider appropriate in consequence of provision made by or under section 82 or 83. 10
- (3) The power of the Secretary of State under section 30(4) of the Energy Act 2008 to modify Part 4 of the Petroleum Act 1998 in its application to certain carbon storage installations includes power to make any modifications of that Part of that Act (in its application to the installations in question) that the Secretary considers appropriate in consequence of provision made by or under section 82 or 83. 15
20
- (4) Section 38A of the Petroleum Act 1998 (protection of funds set aside for the purposes of abandonment programme) has effect as if the reference in subsection (1) of that section to the performance of obligations under an approved abandonment programme included a reference to the meeting of liabilities in respect of decommissioning and legacy costs in relation to carbon storage installations. 25
- (5) In this section—
“carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;
“decommissioning and legacy costs” has the meaning given by section 82(5). 30

Change of use relief

- 85 Change of use relief: installations**
- (1) Section 30A of the Energy Act 2008 (installations converted for CCS demonstration projects) is amended as follows. 35
- (2) For the heading substitute “Change of use relief for carbon storage installations”.

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- (3) For “eligible CCS”, in each place it occurs, substitute “eligible carbon storage”.
- (4) In subsection (1), for “by order” insert “, on an application made by a relevant person, by notice”.
- (5) In subsection (2), for “an order may not be made” substitute “a notice may not be given”. 5
- (6) In subsection (3), for “An order” substitute “A notice”.
- (7) After subsection (3) insert –
 “(3A) The Secretary of State must consult the Oil and Gas Authority before deciding whether to designate an installation under subsection (1).”
- (8) In subsection (4) – 10
 (a) for paragraph (a) (and the final “and”) substitute –
 “(a) the installation is maintained for the purposes of, or in connection with, an activity mentioned in section 17(2)(a), (b) or (c);”
 (b) in paragraph (b), for “used” substitute “maintained”; 15
 (c) at the end insert “, and
 (c) the conditions in subsection (4A) are met in relation to the installation.”
- (9) After subsection (4) insert –
 “(4A) The conditions are that – 20
 (a) the installation is used, or is to be used, wholly or mainly –
 (i) for the purpose of disposing of carbon dioxide by way of geological storage, or
 (ii) as a licensable means of transportation;
 (b) the Secretary of State has given a CS-related abandonment programme notice to a person in relation to the abandonment of the installation and the notice has not been withdrawn. 25
 (4B) In subsection (4A) “CS-related abandonment programme notice” means an abandonment programme notice given under section 29 of the 1998 Act in that section’s application in relation to carbon storage installations (by virtue of section 30 of this Act).” 30
- (10) For subsection (5) substitute –
 “(5) The trigger event occurs in relation to an eligible carbon storage installation when –
 (a) an amount in respect of the expected cost of decommissioning the installation has been paid into a relevant decommissioning fund, and 35
 (b) the Secretary of State certifies by notice in writing (an “approval notice”) given to the person mentioned in section 30(1)(a) of

the 1998 Act that the Secretary of State has approved the amount of the payment.

- (5A) In subsection (5) “relevant decommissioning fund” means a fund established in accordance with regulations under section 82(6)(a) of the Energy Act 2022 for providing security for the discharge of liabilities in respect of decommissioning and legacy costs in relation to the carbon storage installation. 5
- (5B) Where the Secretary of State gives an approval notice in relation to an eligible carbon storage installation the Secretary of State must—
- (a) give a copy of the approval notice to every person to whom a notice has been given under section 29(1) of the 1998 Act in relation to the installation, and 10
 - (b) publish a notice that—
 - (i) specifies the installation, and
 - (ii) states that the Secretary of State has given an approval notice under subsection (5)(b) in relation to it.” 15
- (11) In subsection (11), for “an order made” substitute “a notice given”.
- (12) After subsection (11) insert—
- “(11A) The Secretary of State must publish a notice given under subsection (1).” 20
- (13) In subsection (12)—
- (a) for ““CCS demonstration project” and “commercial electricity generation” have the same meanings” substitute “has the same meaning”;
 - (b) omit the definition of “carbon storage facility”; 25
 - (c) at the appropriate places insert—
 - ““carbon storage installation” has the same meaning as in section 30;”;
 - ““decommissioning and legacy costs” has the meaning given by section 82 of the Energy Act 2022;”;
 - ““geological storage”, in relation to carbon dioxide, has the same meaning as in Part 1 of the Energy Act 2022 (see section 55 of that Act);”;
 - ““licensable means of transportation” has the meaning given by section 2(3) of the Energy Act 2022;”;
 - ““relevant person” means a person to whom a notice may be given under section 29(1) of the 1998 Act in relation to an offshore installation (within the meaning given by section 44 of the 1998 Act);”.

86 Change of use relief: carbon storage network pipelines

- (1) Section 30B of the Energy Act 2008 (submarine pipelines converted for CCS demonstration projects) is amended as follows.
- (2) For the heading substitute “Change of use relief: carbon storage network pipelines”. 5
- (3) For “CCS pipeline”, in each place it occurs, substitute “carbon storage network pipeline”.
- (4) In subsection (1), for “by order” insert “, on an application made by a relevant person, by notice”.
- (5) After subsection (1) insert – 10
 “(1A) The Secretary of State must consult the Oil and Gas Authority before deciding whether to designate a pipeline under subsection (1).”
- (6) In subsection (2) –
 - (a) for paragraph (a) (and the final “and”) substitute – 15
 “(a) the pipeline is maintained for the purposes of, or in connection with, an activity mentioned in section 17(2)(a), (b) or (c);”
 - (b) in paragraph (b), for “used” substitute “maintained”;
 - (c) at the end insert “, and 20
 (c) the conditions in subsection (2A) are met in relation to the pipeline.”
- (7) After subsection (2) insert –

“(2A) The conditions are that –

 - (a) the pipeline is used, or is to be used, wholly or mainly – 25
 - (i) for the purpose of disposing of carbon dioxide by way of geological storage, or
 - (ii) as a licensable means of transportation;
 - (b) the Secretary of State has given a CS-related abandonment programme notice to a person in relation to the abandonment of the pipeline and the notice has not been withdrawn. 30

(2B) In subsection (2A) “CS-related abandonment programme notice” means an abandonment programme notice under section 29 of the 1998 Act given after the time when the pipeline was first used for the purpose of disposing of carbon dioxide by way of geological storage or as a licensable means of transportation.” 35
- (8) For subsection (3) substitute –

“(3) The trigger event occurs in relation to an eligible carbon storage network pipeline when –

- (a) an amount in respect of the expected cost of decommissioning the pipeline has been paid into a relevant decommissioning fund, and
 - (b) the Secretary of State certifies by notice in writing (an “approval notice”) given to the person mentioned in section 30(2)(a) of the 1998 Act (person designated as owner of the pipeline) that the Secretary of State has approved the amount of the payment. 5
- (3A) In subsection (3) “relevant decommissioning fund” means a fund established in accordance with regulations under section 82(6)(a) of the Energy Act 2022 for providing security for the discharge of liabilities in respect of decommissioning and legacy costs in relation to an installation with which the pipeline is associated. 10
- (3B) Where the Secretary of State gives an approval notice in relation to an eligible carbon storage network pipeline, the Secretary of State must – 15
 - (a) give a copy of the approval notice to every person to whom a notice has been given under section 29(1) of the 1998 Act in relation to the pipeline, and
 - (b) publish a notice that – 20
 - (i) specifies the pipeline, and
 - (ii) states that the Secretary of State has given an approval notice under subsection (3)(b) in relation to it.”
- (9) In subsection (6), for “an order made” substitute “a notice given”.
- (10) After subsection (6) insert – 25
 - “(6A) The Secretary of State must publish a notice given under subsection (1).”
- (11) In subsection (7) –
 - (a) for “and “CCS demonstration project” have the same meanings” substitute “has the same meaning”;
 - (b) omit the definition of “carbon storage facility”; 30
 - (c) at the appropriate places insert –
 - ““decommissioning and legacy costs” has the meaning given by section 82(5) of the Energy Act 2022;”;
 - ““geological storage”, in relation to carbon dioxide, has the same meaning as in Part 1 of the Energy Act 2022 (see section 55 of that Act);”;
 - ““licensable means of transportation” has the meaning given by section 2(3) of the Energy Act 2022;”;
 - ““relevant person” means a person to whom a notice may be given under section 29(1) of the 1998 Act in relation to a submarine pipeline;”.

87 Change of use relief: provision of information and advice

In the Energy Act 2008, after section 30B insert –

“30C Relief under sections 30A and 30B: information

- (1) The Secretary of State may by regulations make provision about the obtaining of information required, and sharing of information held, for the purposes of functions of the Secretary of State under sections 30A and 30B, including provision –
- (a) for the Secretary of State to require the holder of a licence under section 7, or a person who qualifies for change of use relief under section 30A or 30B, to provide information to the Secretary of State;
 - (b) authorising Her Majesty’s Revenue and Customs (or anyone acting on their behalf) to disclose to the Secretary of State information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005;
 - (c) for the enforcement of any requirement imposed by virtue of the regulations.
- (2) For the purposes of subsection (1), a person “qualifies for change of use relief” if –
- (a) but for section 30A(6) they would be a person to whom a notice may be given under section 29(1) of the Petroleum Act 1998 in relation to a carbon storage installation, or
 - (b) but for section 30B(4) they would be a person to whom a proposal may be made under section 29(1) of the Petroleum Act 1998 in relation to a submarine pipeline.
- (3) In this section –
- “carbon storage installation” has the same meaning as in section 30 of the Energy Act 2008;
 - “submarine pipeline” has the same meaning as in Part 4 of 1998 Act (see section 45 of that Act).”

CHAPTER 3

STRATEGY AND POLICY STATEMENT

88 Designation of strategy and policy statement

- (1) The Secretary of State may designate a statement as the strategy and policy statement for the purposes of this Part (“the CCUS strategy and policy statement”) if the requirements set out in section 91 are satisfied (consultation and laying requirements).
- (2) The CCUS strategy and policy statement is a statement prepared by the Secretary of State that sets out –

- (a) the strategic priorities, and other main considerations, of Her Majesty’s government in formulating its carbon dioxide capture, usage and storage policy for the United Kingdom (“strategic priorities”),
 - (b) the particular outcomes to be achieved as a result of the implementation of that policy (“policy outcomes”), and 5
 - (c) the roles and responsibilities of persons (whether the Secretary of State, the economic regulator or other persons) who are involved in implementing that policy or who have other functions that are affected by it.
- (3) In preparing a statement for designation under subsection (1) (or undertaking a review under section 90), the Secretary of State must take account of any statement for the time being designated under section 131 of the Energy Act 2013 (strategy and policy statement in respect of energy policy). 10
- (4) The Secretary of State must publish the CCUS strategy and policy statement (including any amended statement following a review under section 90) in such manner as the Secretary of State considers appropriate. 15
- (5) For the purposes of this section, carbon dioxide capture, usage and storage policy “for the United Kingdom” includes such policy for—
 - (a) the territorial sea adjacent to the United Kingdom, or
 - (b) waters in a Gas Importation and Storage Zone (within the meaning given by section 1 of the Energy Act 2008). 20
- (6) In this Chapter—
 - “the CCUS strategy and policy statement” means the statement for the time being designated under subsection (1) as the strategy and policy statement for the purposes of this Part; 25
 - “economic regulator” has the same meaning as in Part 1 (see section 55);
 - “policy outcomes” has the meaning given in subsection (2)(b);
 - “strategic priorities” has the meaning given in subsection (2)(a).

89 Duties with regard to considerations in the statement

- (1) The economic regulator must have regard to the strategic priorities set out in the CCUS strategy and policy statement when carrying out functions under this Part or Part 1. 30
- (2) The Secretary of State and the economic regulator must carry out their respective functions under Part 1 and this Part in the manner which the Secretary of State or the economic regulator (as the case may be) considers is best calculated to further the delivery of the policy outcomes. 35
- (3) Subsection (2) is subject to the application of the principal objectives in the carrying out of any such function.
- (4) Subsections (1) and (2) do not apply to anything done by the economic regulator— 40
 - (a) in the exercise of functions relating to the determination of disputes;

- (b) in the exercise of functions under section 36(1) or 37(1).
- (5) The duties imposed by subsections (1) and (2) do not affect the obligation of the economic regulator or the Secretary of State to perform or comply with any other duty or requirement (whether arising under this Act or another enactment or otherwise). 5
- (6) The economic regulator must give notice to the Secretary of State if at any time the economic regulator concludes that a policy outcome contained in the strategy and policy statement is not realistically achievable.
- (7) A notice under subsection (6) must include – 10
- (a) the grounds on which the conclusion was reached;
 - (b) what (if anything) the economic regulator is doing, or proposes to do, for the purpose of furthering the delivery of the outcome so far as reasonably practicable.
- (8) In subsection (3) “principal objectives” means the principal objectives of the Secretary of State and the economic regulator set out in section 1(1). 15

90 Review

- (1) The Secretary of State must review the CCUS strategy and policy statement if a period of 5 years has elapsed since the relevant time.
- (2) In this section “relevant time”, in relation to the CCUS strategy and policy statement, means – 20
- (a) the time when the statement was first designated under section 88, or
 - (b) if later, the time when a review of the statement under this section last took place.
- (3) A review under subsection (1) must take place as soon as reasonably practicable after the end of the 5 year period. 25
- (4) The Secretary of State may review the CCUS strategy and policy statement at any other time if – 30
- (a) a Parliamentary general election has taken place since the relevant time,
 - (b) the economic regulator has given notice to the Secretary of State under section 89(6) since the relevant time,
 - (c) a significant change in the policy of Her Majesty’s government with regard to carbon dioxide capture, usage and storage has occurred since the relevant time,
 - (d) the Secretary of State has commenced a review under section 134 of the Energy Act 2013 since the relevant time, 35
 - (e) the Parliamentary approval requirement in relation to an amended statement was not met on the last review (see subsection (12)).

- (5) The Secretary of State may determine that a significant change in the government's policy with regard to carbon dioxide capture, usage and storage has occurred for the purposes of subsection (4)(c) only if—
- (a) the change was not anticipated at the relevant time, and
 - (b) if the change had been so anticipated, it appears to the Secretary of State likely that the statement would have been different in a material way. 5
- (6) On a review under this section the Secretary of State may—
- (a) amend the statement (including by replacing the whole or part of the statement with new content), 10
 - (b) leave the statement as it is, or
 - (c) withdraw the statement's designation as the strategy and policy statement.
- (7) The amendment of a statement under subsection (6)(a) has effect only if the Secretary of State designates under section 88 the amended statement as the strategy and policy statement (and the procedural requirements under section 91 apply in relation to any such designation). 15
- (8) For the purposes of this section, corrections of clerical or typographical errors are not to be treated as amendments made to the statement.
- (9) The designation of a statement as the strategy and policy statement ceases to have effect upon a subsequent designation of an amended statement as the strategy and policy statement in accordance with subsection (7). 20
- (10) The Secretary of State must consult the following persons before proceeding under subsection (6)(b) or (c)—
- (a) the economic regulator; 25
 - (b) so far as the decision as to whether or not to proceed relates to Scottish devolved matters, the Scottish Ministers;
 - (c) so far as that decision relates to Welsh devolved matters, the Welsh Ministers;
 - (d) so far as that decision relates to Northern Ireland devolved matters, the Department for the Economy in Northern Ireland. 30
- (11) For the purposes of subsection (2)(b), a review of a statement takes place—
- (a) where the decision on the review is to amend the statement under subsection (6)(a)—
 - (i) at the time when the amended statement is designated as the CCUS strategy and policy statement under section 88, or 35
 - (ii) if the amended statement is not so designated, at the time when the amended statement was laid before Parliament for approval under section 91(9);
 - (b) where the decision on the review is to leave the statement as it is under subsection (6)(b), at the time when that decision is taken. 40

- (12) For the purposes of subsection (4)(e), the Parliamentary approval requirement in relation to an amended statement was not met on the last review if –
- (a) on the last review of the strategy and policy statement to be held under this section, an amended statement was laid before Parliament for approval under section 91(9), but 5
 - (b) the amended statement was not designated because such approval was not given.
- (13) For the purposes of this section –
- (a) something relates to Welsh devolved matters so far as it relates to any matter provision about which would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 10
 - (b) something relates to Scottish devolved matters so far as it relates to any matter provision about which would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 15
 - (c) something relates to Northern Ireland devolved matters so far as it relates to any matter provision about which – 20
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998. 25

91 Procedural requirements

- (1) This section sets out the requirements that must be satisfied in relation to a statement before the Secretary of State may designate it as the CCUS strategy and policy statement. 30
- (2) In this section references to a statement include references to a statement as amended following a review under section 90(6)(a).
- (3) The Secretary of State must first –
- (a) prepare a draft of the statement, and 35
 - (b) issue the draft to the required consultees for the purpose of consulting them about it.
- (4) The “required consultees” are –
- (a) the economic regulator,
 - (b) the Scottish Ministers, 40
 - (c) the Department for the Economy in Northern Ireland, and
 - (d) the Welsh Ministers.

- (5) The Secretary of State must then—
- (a) make such revisions to the draft as the Secretary of State considers appropriate as a result of responses to the consultation under subsection (3)(b), and
 - (b) issue the revised draft for the purposes of further consultation about it to the required consultees and to such other persons as the Secretary of State considers appropriate. 5
- (6) The Secretary of State must then—
- (a) make any further revisions to the draft that the Secretary of State considers appropriate as a result of responses to the consultation under subsection (5)(b), and 10
 - (b) prepare a report summarising those responses and the changes (if any) that the Secretary of State has made to the draft as a result.
- (7) In relation to required consultees within subsection (4)(b) to (d), references in subsections (3)(b) and (5)(b) to consultation about a draft are to consultation about the draft so far as it relates— 15
- (a) in the case of the Scottish Ministers, to Scottish devolved matters;
 - (b) in the case of the Department for the Economy in Northern Ireland, to Northern Ireland devolved matters;
 - (c) in the case of the Welsh Ministers, to Welsh devolved matters. 20
- (8) References in this section to relating to Scottish devolved matters, Northern Ireland devolved matters or Welsh devolved matters are to be interpreted in accordance with section 90(13).
- (9) The Secretary of State must lay before Parliament—
- (a) the statement as revised under subsection (6)(a), and 25
 - (b) the report prepared under subsection (6)(b).
- (10) The statement as laid under subsection (9)(a) must have been approved by a resolution of each House of Parliament before the Secretary of State may designate it as the strategy and policy statement under section 88.
- (11) The requirement under subsection (3)(a) to prepare a draft of a statement may be satisfied by preparation carried out before, as well as preparation carried out after, the passing of this Act. 30

CHAPTER 4

CARBON DIOXIDE STORAGE LICENCES

- 92 Specified provisions in carbon dioxide storage licences** 35
- (1) Schedule 5 amends Schedule 1 to the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (“the 2010 Regulations”).
 - (2) Subsections (3) to (5) apply in relation to a licence granted (or having effect as if granted) by the Oil and Gas Authority under section 18(1) of the Energy

-
- Act 2008 which is in force immediately before the commencement of Schedule 5.
- (3) The licence has effect with the addition of provision having the same legal effect as paragraph 6 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 5 to this Act). 5
- (4) If the licence confers power on the Oil and Gas Authority to revoke a licence in connection with a change in control of a licence holder which is a company, the licence has effect –
- (a) with the omission of such provision, and
- (b) with the replacement of such provision by provision having the same legal effect as paragraph 7 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 5 to this Act). 10
- (5) If the licence confers power on the Oil and Gas Authority to partially revoke a licence in connection with a change in control of a licence holder which is a company, the licence has effect – 15
- (a) with the omission of such provision, and
- (b) with the replacement of such provision by provision having the same legal effect as paragraph 8 of Schedule 1 to the 2010 Regulations (as inserted by Schedule 5 to this Act).
- (6) A reference in any document to provisions of a licence which are to have effect with amendments as provided for by Schedule 5 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended. 20
- (7) A provision inserted in a licence by virtue of Schedule 5 may be altered or deleted by deed executed by the Secretary of State and the licence holder or, as respects Scotland, by an instrument subscribed or authenticated by the Secretary of State and the licence holder in accordance with the Requirements of Writing (Scotland) Act 1995. 25
- 93 Content of storage permits under carbon dioxide storage licences**
- (1) In the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221) (“the 2010 Regulations”), regulation 8 (content of storage permits) is amended as follows – 30
- (a) after paragraph (1) insert –
- “(1A) If the operator is a company, a storage permit must also include the provisions contained in paragraph 6(2) to (11) of Schedule 1, read as if – 35
- (a) any reference to a company were to the operator,
- (b) the reference in paragraph 6(8)(b) to the licence were to the storage permit, and
- (c) paragraph 6(10)(c) were omitted.”; 40
- (b) in paragraph (2), for “In this” substitute “In paragraph (1) of this”.

- (2) Subsection (4) applies in relation to a storage permit granted under an existing licence.
- (3) “Existing licence” means a licence granted (or having effect as if granted) by the Oil and Gas Authority under section 18(1) of the Energy Act 2008 which is in force immediately before the commencement of subsection (1). 5
- (4) The storage permit has effect with the addition of provision having the same legal effect as provision required to be included in the permit by reason of paragraph (1A) of regulation 8 of the 2010 Regulations (as inserted by subsection (1)(a)).
- 94 Offences relating to carbon dioxide storage licences 10**
- In section 23 of the Energy Act 2008 (offences relating to carbon dioxide storage licences), after subsection (1) insert—
- “(1A) But a licence holder does not commit an offence under subsection (1)(a) or (b) if—
- (a) the licence holder is a company, or, where there are joint licence holders, any of them is a company, and 15
- (b) the thing mentioned in subsection (1)(a) or (b) is a change in the control of the company.”
- 95 Power of OGA to require information about change in control of licence holder 20**
- After section 29 of the Energy Act 2008 insert—
- “Information about change in control of licence holder*
- 29A OGA’s power to require information about change in control of licence holder**
- (1) This section applies in relation to a licence granted (or having effect as if granted) by the OGA which includes provisions prohibiting a change in control of a licence holder which is a company without the OGA’s consent. 25
- (2) The OGA may by notice in writing require a person within subsection (3) to provide the OGA with any information that it requires for the purpose of exercising its functions in relation to a change or potential change in control of a licence holder which is a company. 30
- (3) The persons within this subsection are—
- (a) the company;
- (b) the person who (if consent were granted) would take control of the company; 35
- (c) if the company is a joint licence holder with another person or other persons, that other person or those other persons;

- (d) any person not within any of paragraphs (a) to (c) who appears to the OGA to have information that it requires as mentioned in subsection (2).
- (4) The power conferred by this section does not include power to require the provision of any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications. 5
- (5) Nothing in this section limits any power of the OGA to require information under – 10
- (a) regulations under this Chapter,
 - (b) the terms of a licence, or
 - (c) the terms of a permit granted under a licence.”

CHAPTER 5

GENERAL 15

96 Access to infrastructure

- (1) The Secretary of State may by regulations make provision about the acquisition of rights to use any of the following (whether existing or proposed) –
- (a) relevant infrastructure within the meaning of the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305); 20
 - (b) relevant infrastructure within the meaning of the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) (S.R. (N.I.) 2015 No. 388).
- (2) In exercising the power under subsection (1) the Secretary of State must have regard to the need to ensure that the process for acquiring such rights operates in a transparent and non-discriminatory manner. 25
- (3) Regulations under subsection (1) may specify circumstances in which access to relevant infrastructure may be refused.
- (4) Regulations under subsection (1) may amend –
- (a) the Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011 (S.I. 2011/2305); 30
 - (b) the Storage of Carbon Dioxide (Access to Infrastructure) Regulations (Northern Ireland) (S.R. (N.I.) 2015 No. 388).
- (5) Before making regulations under subsection (1) the Secretary of State must consult – 35
- (a) the economic regulator;
 - (b) the Scottish Ministers, if the regulations contain provision that would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;

- (c) the Welsh Ministers, if the regulations contain provision that would be within the legislative competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 5
 - (d) the Department for the Economy in Northern Ireland, if the regulations contain provision that –
 - (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 10
 - (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998;
 - (e) the Oil and Gas Authority. 15
- (6) Regulations under subsection (1) are subject to the affirmative procedure.

97 Financial assistance

- (1) The Secretary of State may, out of money provided by Parliament, provide financial assistance to any person for the purpose of encouraging, supporting or facilitating – 20
- (a) transportation and storage of carbon dioxide;
 - (b) carbon dioxide capture facilities which operate (or are to operate) in association with facilities for the transportation and storage of carbon dioxide;
 - (c) low carbon hydrogen production; 25
 - (d) transportation and storage of hydrogen.
- (2) The financial assistance referred to in subsection (1) includes expenditure incurred by the Secretary of State for the purposes of, or in connection with –
- (a) the establishment of a revenue support counterparty, a hydrogen levy administrator or an allocation body; 30
 - (b) making payments to a revenue support counterparty.
- (3) Financial assistance under this section –
- (a) may be provided in any form and in particular by way of grants, loans, guarantees or indemnities or by the provision of insurance;
 - (b) may be provided subject to conditions (which may include conditions about repayment with or without interest or other return); 35
 - (c) may be provided pursuant to a contract;
 - (d) may be provided to an investment fund for onward investment or for administrative costs relating to onward investment;
 - (e) may be provided by incurring expenditure for the benefit of the person assisted; 40

- (f) may take the form of investment by the acquisition (directly or through another body corporate) of shares in or securities of a body corporate;
- (g) may take the form of investment by the acquisition of any undertaking or of any assets.
- (4) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (3)(f) without the consent of the body corporate concerned. 5
- (5) The power to provide financial assistance under this section is in addition to (and does not limit or replace) any other power of a Minister of the Crown to provide financial assistance. 10
- (6) In this section –
- “allocation body” has the same meaning as in Chapter 1 (see section 68(5));
 - “greenhouse gas” has the meaning given by section 92(1) of the Climate Change Act 2008; 15
 - “hydrogen levy administrator” has the same meaning as in Chapter 1 (see section 65(6));
 - “low carbon hydrogen production” means production of hydrogen by a method which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases; 20
 - “revenue support counterparty” has the same meaning as in Chapter 1 (see section 58(6));
 - “storage”, in relation to carbon dioxide, means any storage with a view to the permanent containment of carbon dioxide;
 - “undertaking” means any trade or business or any other activity providing employment. 25

PART 3

NEW TECHNOLOGY

CHAPTER 1

LOW-CARBON HEAT SCHEMES 30

98 Low-carbon heat schemes

- (1) The Secretary of State may by regulations make provision for the establishment and operation of one or more low-carbon heat schemes.
- (2) A “low-carbon heat scheme” is a scheme for encouraging the supply or installation in the United Kingdom of relevant heating appliances through the imposition of low-carbon heat targets on persons to whom the scheme applies. 35
- (3) In this Chapter –

- “low-carbon heat target” means a target imposed by or under scheme regulations;
- “relevant heating appliance” means –
- (a) a heating appliance that generates heat but is incapable of burning fossil fuels or peat to do so, or 5
 - (b) a heating appliance that generates heat by burning fossil fuels or peat, but does so only as part of a wider system to supplement heat from air, water or the ground.
- (4) In the definition of “relevant heating appliance” in subsection (3), “fossil fuel” means – 10
- (a) coal,
 - (b) lignite,
 - (c) natural gas (within the meaning of the Energy Act 1976),
 - (d) crude liquid petroleum,
 - (e) petroleum products (within the meaning of that Act), or 15
 - (f) any substance produced directly or indirectly from a substance mentioned in paragraphs (a) to (e).
- (5) The provision made by sections 99 to 105 is without prejudice to the generality of subsection (1).
- (6) In this Chapter, “scheme regulations” means regulations under subsection (1). 20

99 Application of scheme

- (1) Scheme regulations that provide for the establishment of a low-carbon heat scheme must identify –
- (a) the descriptions of person to whom the scheme applies; 25
 - (b) the kinds of relevant heating appliance to which the scheme applies.
- (2) A person within a description identified by virtue of subsection (1)(a) is referred to in this Chapter as a “scheme participant”.
- (3) Scheme regulations may –
- (a) set low-carbon heat targets, or 30
 - (b) provide for low-carbon heat targets to be set in accordance with provision made by the regulations.
- Section 100 contains further provision about the setting of targets.
- (4) Scheme regulations must make provision about the period or periods in relation to which low-carbon heat targets have effect. 35
- (5) The provision that may be made by virtue of subsection (4) includes –
- (a) provision authorising things done by a scheme participant before the first period in relation to which a low-carbon heat target has effect to be treated as done by the scheme participant during that period;

- (b) provision authorising things done by a scheme participant during one period in relation to which a low-carbon-heat target has effect to be treated instead as done by the scheme participant during a different period in relation to which such a target has effect.

100 Setting of targets etc

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- (1) A low-carbon heat target may be set in whatever way, and by reference to whatever criteria, the Secretary of State considers appropriate, and may for example be set –
- (a) by reference to the carrying on of specified activities;
 - (b) as a proportion of the activities of a scheme participant that must relate to relevant heating appliances; 10
 - (c) by reference to the average level of energy efficiency (determined in accordance with scheme regulations) to be achieved in relation to heating appliances, or specified descriptions of heating appliances, supplied or installed by a scheme participant; 15
 - (d) by reference to the average carbon intensity of heat generation (determined in accordance with scheme regulations) of heating appliances, or specified descriptions of heating appliances, supplied or installed by a scheme participant;
 - (e) where a scheme participant manufactures heating appliances, by specifying what proportion of those heating appliances, or of specified heating appliances, that are supplied or installed (whether or not by the scheme participant) must be relevant heating appliances. 20
- (2) The power to specify an activity by virtue of subsection (1)(a) includes power to specify circumstances or conditions relating to the carrying out of the activity. 25
- (3) Scheme regulations may confer a discretion on the Secretary of State or any other person in connection with the setting of low-carbon heat targets.
- (4) The reference in subsection (1)(d) to the carbon intensity of heat generation, in relation to an appliance, is a reference to the level of greenhouse gas emissions per unit of heat generated by the activity. 30
 “Greenhouse gas emissions” means emissions of any greenhouse gas within the meaning of section 92(1) of the Climate Change Act 2008.
- (5) Scheme regulations may provide –
- (a) for different weight to be given to different kinds of appliance or different activities; 35
 - (b) for low-carbon heat targets to be set at different levels for different kinds of appliance or different activities.
- (6) Scheme regulations may provide for specified activities to count towards the meeting of a low-carbon heat target. 40
- (7) In this section, “specified” means specified in scheme regulations.

101 Further provision about scheme regulations

- (1) Scheme regulations must provide for the making of determinations as to whether a scheme participant has met a low-carbon heat target imposed on the scheme participant.
- (2) Scheme regulations may make provision for monitoring the operation of a low-carbon heat scheme, and may in particular make provision about—
 - (a) the keeping of records by scheme participants and others;
 - (b) the provision of information by scheme participants and others;
 - (c) the audit and verification of information provided by scheme participants and others.
- (3) Scheme regulations may make provision—
 - (a) enabling scheme participants to pool or transfer low-carbon heat targets imposed on them;
 - (b) for the issuing of certificates representing activities or appliances to which a low-carbon heat target relates;
 - (c) enabling scheme participants to acquire certificates mentioned in paragraph (b) for the purpose of meeting a low-carbon heat target;
 - (d) about the keeping of records in relation to—
 - (i) the pooling or transfer of low-carbon heat targets;
 - (ii) the acquisition of certificates.
- (4) Scheme regulations may make provision—
 - (a) requiring a scheme participant who fails to meet a low-carbon heat target to make a payment, before a specified deadline, of an amount specified by or determined in accordance with the regulations;
 - (b) for a payment mentioned in paragraph (a) to be made to the administrator (see section 102) or to such other person as the regulations may specify;
 - (c) for a person who fails to meet a low-carbon heat target to be subject to such consequences (instead of or in addition to a requirement mentioned in paragraph (a)) as may be specified;
 - (d) about how liability to make a payment, or to other consequences, is to be determined where low-carbon heat targets have been pooled or transferred by virtue of provision made under subsection (3)(a).
- (5) In subsection (4), “specified” means specified in scheme regulations.

102 Administration of scheme

- (1) Scheme regulations may provide for the appointment of a person as the administrator of a low-carbon heat scheme.
- (2) Scheme regulations—
 - (a) may confer functions on the administrator for the purposes of the scheme;

- (b) may authorise the administrator to arrange for another person to carry out any functions of the administrator.
- (3) The functions that may be conferred on the administrator by virtue of subsection (2) include, for example, functions in connection with—
 - (a) setting low-carbon heat targets; 5
 - (b) determining whether low-carbon heat targets have been met;
 - (c) obtaining information;
 - (d) keeping records;
 - (e) requiring scheme participants to make payments to the administrator in connection with the costs of operating the scheme. 10
- (4) Only the following may be appointed as the administrator of a low-carbon heat scheme—
 - (a) the Secretary of State;
 - (b) the Scottish Ministers;
 - (c) the Welsh Ministers; 15
 - (d) the Department for the Economy in Northern Ireland;
 - (e) a public authority (other than a person within any of paragraphs (a) to (d));
 - (f) any combination of the above.
- (5) More than one person may be appointed as the administrator of a low-carbon heat scheme. 20
- (6) Scheme regulations that appoint a public authority as the administrator of a low-carbon heat scheme may make such amendments to primary legislation as the Secretary of State considers appropriate for the purpose of enabling the authority to carry out the functions conferred on it by the regulations. 25
- (7) In this section, “public authority” means a person with functions of a public nature.

103 Enforcement, penalties and offences

- (1) Scheme regulations may authorise the administrator of a low-carbon heat scheme—
 - (a) to require the production of documents or the provision of information;
 - (b) to question the officers of a company or other individuals;
 - (c) to enter premises with a warrant;
 - (d) to seize documents or records. 30
 - (2) Scheme regulations may authorise the administrator of a low-carbon heat scheme, in circumstances specified in the regulations—
 - (a) to treat activities of a person (A) as activities of a different person (B) for the purposes of the scheme, and
 - (b) to treat a low-carbon heat target imposed on A as if it had been imposed on B. 35
- 40

- (3) Scheme regulations may provide that a person is liable to one or more penalties in respect of a failure to comply with a requirement imposed on the person by or under a low-carbon heat scheme.
- (4) Where by virtue of subsection (3) scheme regulations provide that a person is liable to a financial penalty, the regulations—
 - (a) may specify the amount of the penalty or provide for the amount of the penalty to be determined in accordance with the regulations;
 - (b) must provide for the penalty to be paid to the administrator or to such other person as the regulations may specify.
- (5) Scheme regulations may create offences for failure to comply with a requirement imposed by or under a low-carbon heat scheme.
- (6) Scheme regulations made by virtue of subsection (5) may provide for an offence created by the regulations to be triable—
 - (a) only summarily, or
 - (b) either summarily or on indictment.
- (7) Scheme regulations made by virtue of subsection (5) may provide for an offence created by the regulations to be punishable with a fine.

104 Application of sums paid by virtue of section 101(4) or 103(3)

- (1) Scheme regulations may make provision about the application of amounts paid by virtue of section 101(4)(a) or 103(3).
- (2) Provision made by virtue of subsection (1) may require the payment of amounts into the Consolidated Fund.

105 Appeals

- (1) Scheme regulations may make provision about appeals against—
 - (a) decisions made by the administrator of a low-carbon heat scheme, and
 - (b) civil penalties imposed or enforcement action taken for failure to comply with a requirement imposed by or under a low-carbon heat scheme.
- (2) The regulations must specify the court, tribunal or person who is to hear and determine an appeal made by virtue of subsection (1).

106 Scheme regulations: procedure etc

- (1) Scheme regulations are subject to the negative procedure unless subsection (2) applies, in which case they are subject to the affirmative procedure.
- (2) This subsection applies if scheme regulations—
 - (a) establish a low-carbon heat scheme;
 - (b) extend the descriptions of person, or the kinds of relevant heating appliance, to which a low-carbon heat scheme applies;

- (c) provide for new penalties;
 - (d) increase the amount of existing financial penalties by more than is necessary to reflect changes in the value of money;
 - (e) create an offence or increase the fine for an existing offence;
 - (f) confer new powers to enforce requirements imposed by or under a low-carbon heat scheme; 5
 - (g) amend primary legislation.
- (3) Before making scheme regulations, the Secretary of State must consult—
- (a) the Scottish Ministers, so far as the regulations apply in relation to Scotland; 10
 - (b) the Welsh Ministers, so far as the regulations apply in relation to Wales;
 - (c) the Department for the Economy in Northern Ireland, so far as the regulations apply in relation to Northern Ireland.
- (4) Scheme regulations may create exceptions to any requirement imposed by the regulations. 15

107 Interpretation of Chapter 1

In this Chapter—

- “low-carbon heat scheme” has the meaning given by section 98(2);
- “low-carbon heat target” has the meaning given by section 98(3); 20
- “primary legislation” means—
 - (a) an Act,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of Senedd Cymru, or
 - (d) Northern Ireland legislation; 25
- “relevant heating appliance” has the meaning given by section 98(3);
- “scheme participant” has the meaning given by section 99(2);
- “scheme regulations” has the meaning given by section 98(6).

CHAPTER 2

HYDROGEN GRID CONVERSION TRIALS 30

108 Modifications of the gas code

- (1) For the purposes of this section, “hydrogen grid conversion trial” means a scheme designated by the Secretary of State that—
- (a) relates to a particular place or area (the “trial location”),
 - (b) is designed to gather evidence for the purpose of enabling assessments to be made about the feasibility, costs and benefits of using hydrogen for heating or cooking, 35
 - (c) requires the network for supplying gas to the trial location to be modified so as to enable the supply of hydrogen, and

- (d) is intended to have effect for a definite period.
- (2) Schedule 2B to the Gas Act 1986 (the gas code) applies in relation to a hydrogen grid conversion trial –
 - (a) as if references to a gas transporter included a person (other than a gas transporter) who is conducting the trial, and 5
 - (b) as if it were modified in accordance with subsections (3) to (5).
- (3) Paragraph 16 (alterations etc of burners on change of calorific value) applies as if –
 - (a) in sub-paragraph (1), the words “at a rate not exceeding 75,000 therms a year” were omitted, and 10
 - (b) in sub-paragraph (2), the steps required to be taken in respect of premises in the trial location also included any works required in respect of the premises (other than works already mentioned in sub-paragraph (2)) for the purposes or in consequence of the trial.
- (4) Paragraph 23 (entry of premises during supply) applies as if the power conferred by sub-paragraph (1)(a) included power to enter premises in the trial location for the purpose of inspecting anything on the premises, or carrying out any tests on the premises, in preparation for or otherwise in connection with the trial. 15
- (5) Paragraph 24 (entry of premises to discontinue supply) applies as if the power conferred by sub-paragraph (2) were exercisable for the purposes of the trial – 20
 - (a) in relation to any premises in the trial location, and
 - (b) notwithstanding sub-paragraph (1).
- (6) For the purposes of the application of the Rights of Entry (Gas and Electricity Boards) Act 1954 in relation to a relevant power of entry (see paragraph 28(5) of Schedule 2B to the Gas Act 1986), the reference in section 1(2) of the 1954 Act to a gas operator includes a reference to a person (other than a gas transporter) who is conducting a hydrogen grid conversion trial. 25
- (7) In subsection (6), “relevant power of entry” means a power of entry conferred by Schedule 2B to the Gas Act 1986, as it applies by virtue of this section in relation to a hydrogen grid conversion trial. 30

109 Regulations for protection of consumers

- (1) The Secretary of State may by regulations make provision –
 - (a) requiring a gas transporter to take specified steps to secure that consumers in a trial location are properly informed about a hydrogen grid conversion trial being conducted in the trial location; 35
 - (b) requiring a gas transporter to take specified steps to secure that consumers are given adequate warning of the need for their premises to be disconnected for the purposes of a hydrogen grid conversion trial; 40
 - (c) about the enforcement of requirements imposed by virtue of paragraph (a) or (b).

-
- (2) Regulations under subsection (1) may confer functions on gas transporters in connection with the discharge of requirements imposed by the regulations.
- (3) The provision that may be made by virtue of subsection (1)(c) includes provision for the imposition of civil penalties in respect of a failure to comply with a requirement imposed by the regulations (but does not include provision for the creation of a criminal offence). 5
- (4) The Secretary of State may by regulations make provision designed to secure protection for consumers and other people who are affected, or likely to be affected, by a hydrogen grid conversion trial.
- (5) The provision that may be made by regulations under subsection (4) includes, for example, provision – 10
- (a) about the making of complaints about the exercise by a gas transporter of a power conferred by a relevant statutory provision;
 - (b) about the award of redress in specified circumstances;
 - (c) imposing requirements on gas transporters or other persons to provide information to consumers and others; 15
 - (d) for securing that consumers and others are not required to incur expenditure, or are not otherwise financially disadvantaged, as a result of a hydrogen grid conversion trial;
 - (e) for securing fair treatment of consumers and others before, during and after a hydrogen grid conversion trial; 20
 - (f) about the quality of products provided to consumers and others and the quality of works carried out on premises owned by consumers and others;
 - (g) about the enforcement of requirements imposed by the regulations on gas transporters or other persons. 25
- (6) The provision that may be made by virtue of subsection (5)(g) includes provision for the imposition of civil penalties in respect of a failure to comply with a requirement imposed by the regulations (but does not include provision for the creation of a criminal offence). 30
- (7) Where regulations under this section make provision for a civil penalty, they may also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (8) Regulations under this section are subject to the negative procedure.
- (9) In this section – 35
- “consumer” and “disconnected” have the same meaning as in Schedule 2B to the Gas Act 1986 (see paragraph 1(1) of that Schedule);
 - “gas transporter” means –
 - (a) a gas transporter within the meaning of Part 1 of the Gas Act 1986 (see section 7 of that Act), or 40
 - (b) any other person who –
 - (i) is conducting a hydrogen grid conversion trial, and

- (ii) does not require a licence under section 7 of the Gas Act 1986 as a result of an exemption under section 6A of that Act;
- “hydrogen grid conversion trial” and “trial location” have the same meaning as in section 108; 5
- “specified” means specified by regulations.

CHAPTER 3

MISCELLANEOUS

Fusion energy

110 Fusion energy facilities: nuclear site licence not required 10

- (1) Section 1 of the Nuclear Installations Act 1965 (restriction of certain nuclear installations to licensed sites) is amended as follows.
- (2) After subsection (2) insert –

“(2A) Subsection (1) does not apply to a fusion energy facility.

(2B) In subsection (2A), “fusion energy facility” means a site that is – 15

- (a) used for the purpose of installing or operating any plant designed or adapted for the production of electrical energy or heat by fusion, and
- (b) not also used for the purpose of installing or operating a nuclear reactor.” 20

Removals of greenhouse gases

111 Climate Change Act 2008: meaning of “UK removals”

In section 29(1)(b) of the Climate Change Act 2008 (UK emissions and removals of greenhouse gases), for “land use, land-use change or forestry” substitute “processes, mechanisms or”. 25

PART 4

INDEPENDENT SYSTEM OPERATOR AND PLANNER

Independent System Operator and Planner: functions and designation

112 The Independent System Operator and Planner (“the ISOP”)

- (1) This Part contains provision about the Independent System Operator and Planner (referred to in this Part as “the ISOP”). 30
- (2) The functions of the ISOP include –

- (a) functions conferred by or by virtue of this Act, which include functions relating to the matters mentioned in subsection (3), and
 - (b) whatever other functions are conferred on the ISOP by or by virtue of any enactment other than one contained in this Act.
- (3) The matters referred to in subsection (2)(a) are— 5
- (a) co-ordinating and directing the flow of electricity onto and over transmission systems;
 - (b) making and administering arrangements for the provision of services for the purpose of facilitating the co-ordination of the flow of electricity onto and over transmission systems; 10
 - (c) carrying out strategic planning and forecasting in connection with—
 - (i) the development of transmission systems,
 - (ii) the provision of services referred to in paragraph (b), and
 - (iii) other arrangements relating to the conveyance or supply of electricity; 15
 - (d) carrying out strategic planning and forecasting in connection with—
 - (i) the development of pipe-line systems for the conveyance of gas, and
 - (ii) other arrangements relating to the conveyance or supply of gas; 20
 - (e) providing advice, analysis or information in relation to the matters mentioned in section 122(1).

113 Designation etc

- (1) The Secretary of State may by notice designate a person as the ISOP.
- (2) A notice under subsection (1)— 25
 - (a) must specify the time from which the designation has effect;
 - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.
- (3) The Secretary of State must ensure that a person is designated under subsection (1) at all times after a person is first designated (but at any time not more than one person may be designated). 30
- (4) The Secretary of State may by notice revoke a person’s designation under subsection (1).
- (5) A notice under subsection (4)— 35
 - (a) must specify the time from which the revocation has effect;
 - (b) must be published by the Secretary of State as soon as reasonably practicable after the notice is given.

General duties

114 Duty to promote particular objectives

- (1) The ISOP must carry out its functions in the way that it considers is best calculated to promote—
 - (a) the net zero objective; 5
 - (b) the security of supply objective;
 - (c) the efficiency and economy objective.
- (2) The net zero objective is the objective of enabling the Secretary of State to meet the duties imposed by—
 - (a) section 1 of the Climate Change Act 2008 (net UK carbon account target for 2050), and 10
 - (b) section 4(1)(b) of that Act (UK carbon account not to exceed carbon budget).
- (3) The security of supply objective is the objective of ensuring the security of supply, to existing and future consumers, of—
 - (a) electricity conveyed by distribution systems or transmission systems, and 15
 - (b) gas conveyed through pipes.
- (4) The efficiency and economy objective is the objective of promoting—
 - (a) efficient, co-ordinated and economical systems for the distribution and transmission of electricity and the conveyance of gas; 20
 - (b) efficiency (including the efficient use of energy) and economy on the part of persons who carry out relevant activities.
- (5) In this Part, “relevant activity” means any of the following, so far as carried out in the course of a business—
 - (a) an activity mentioned in section 5(1) of the Gas Act 1986 (gas transportation, interconnection, supply, shipping, system planning, smart meter communication, code management);
 - (b) an activity mentioned in section 4(1) of the Electricity Act 1989 (electricity generation, transmission, distribution, supply, interconnection, multi-purpose interconnection, system operation, smart meter communication, code management); 30
 - (c) an activity, other than an activity within paragraph (a) or (b), that is connected with—
 - (i) the production, conveyance, storage or supply of energy, 35
 - (ii) the reduction of UK emissions of targeted greenhouse gases arising from the production, conveyance, storage, supply or consumption of energy, or
 - (iii) data relating to any matter within sub-paragraph (i) or (ii), or to demand for or consumption of energy; 40
 - (d) any other activity in respect of which the ISOP has functions.

- (6) For the purposes of subsection (5)(c) –
- (a) “energy” means energy in any form and includes fuel or other substances used to produce energy;
 - (b) references to the production of energy include references to the conversion of energy from one form to another; 5
 - (c) references to the supply of energy include references to adjusting consumption of energy (whether generally, at particular times, or by particular persons);
 - (d) an activity referred to in paragraph (c)(i) is not a relevant activity when carried out in relation to products for human or animal consumption; 10
 - (e) “UK emissions of targeted greenhouse gases” are emissions of such gases as are, or are treated for the purposes of Part 1 of the Climate Change Act 2008 as, emissions from sources in the United Kingdom.
- (7) In this section, “targeted greenhouse gas” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act). 15

115 Duty to have regard to particular matters

- (1) The ISOP must, when carrying out its functions, have regard to –
- (a) the need to facilitate competition between persons who carry out a relevant activity (except to the extent that such persons are, in accordance with or by virtue of an enactment, not subject to competition in relation to the activity); 20
 - (b) the consumer impact of a relevant activity;
 - (c) the whole-system impact of a relevant activity;
 - (d) the desirability of facilitating innovation in relation to the carrying out of relevant activities. 25
- (2) The reference in subsection (1)(b) to the consumer impact of a relevant activity is a reference to the impact (or likely impact) of –
- (a) the behaviour of persons who carry out the activity on existing and future consumers, and 30
 - (b) the behaviour of existing and future consumers on the carrying out of the activity.
- (3) The reference in subsection (1)(c) to the whole-system impact of a relevant activity is a reference to the impact (or likely impact) of –
- (a) the carrying out of the activity, and 35
 - (b) the behaviour of existing and future consumers in relation to the carrying out of the activity,
- in relation to the carrying out of other relevant activities.

116 Duty to have regard to strategy and policy statement

- (1) The ISOP must, when carrying out its functions, have regard to the strategic priorities set out in the current strategy and policy statement. 40

- (2) The ISOP must give notice to the Secretary of State if at any time the ISOP concludes that a policy outcome contained in the current strategy and policy statement is not realistically achievable.
- (3) A notice under subsection (2) must include –
- (a) the grounds on which the conclusion was reached; 5
 - (b) what (if anything) the ISOP is doing or proposes to do for the purpose of furthering the delivery of the outcome so far as reasonably practicable.
- (4) In this section –
- “the current strategy and policy statement” means the statement for the time being designated under section 131(1) of the Energy Act 2013; 10
 - “policy outcome” and “strategic priorities” have the same meaning as in Part 5 of the Energy Act 2013 (see section 131(5) of that Act).
- (5) Part 5 of the Energy Act 2013 is amended as follows.
- (6) In section 131 (designation of strategy and policy statement) – 15
- (a) in subsection (2)(c), after “Authority” insert “, the Independent System Operator and Planner”;
 - (b) in subsection (5), after the definition of “the 1986 Act” insert –
 - ““Independent System Operator and Planner” means the person for the time being designated under section 113(1) of the Energy Act 2022;”.20
- (7) Section 134 (review of strategy and policy statement) is amended as follows.
- (8) In subsection (4), after paragraph (b) insert –
- “(ba) the Independent System Operator and Planner has given notice to the Secretary of State under section 116(2) of the Energy Act 2022 since the relevant time,”.
- 25
- (9) After subsection (5) insert –
- “(5A) The Secretary of State may also review the strategy and policy statement at any other time if the Secretary of State considers it appropriate to do so in preparation for or in connection with the designation of a person under section 113(1) of the Energy Act 2022 (Independent System Operator and Planner).”
- 30
- (10) In subsection (10), after paragraph (a) insert –
- “(aa) the Independent System Operator and Planner,”.
- (11) In section 135(4) (procedural requirements in relation to strategy and policy statement), after paragraph (a) insert – 35
- “(aa) the Independent System Operator and Planner,”.

*Licences***117 Licensing of electricity system operator activity**

- (1) Part 1 of the Electricity Act 1989 is amended as follows.
- (2) In section 4(1) (prohibition on unlicensed supply, transmission etc of electricity), after paragraph (c) insert – 5
- “(ca) co-ordinates and directs the flow of electricity onto and over transmission systems by means of which the transmission of electricity takes place;”.
- (3) Section 6 (licences authorising supply, etc) is amended as follows.
- (4) In subsection (1), after paragraph (d) insert – 10
- “(da) subject to subsections (1ZB) and (2ZA), a licence authorising a person to co-ordinate and direct the flow of electricity onto and over transmission systems by means of which the transmission of electricity takes place (“an electricity system operator licence”);”.
- 15
- (5) After subsection (1) insert –
- “(1ZA) Subject to subsection (2ZA), the Secretary of State may grant an electricity system operator licence.
- (1ZB) The first electricity system operator licence may only be granted by the Secretary of State. 20
- (1ZC) For the purposes of this section, references to the grant of an electricity system operator licence include the giving of a direction under section 118 of the Energy Act 2022 in respect of a transmission licence.”
- (6) After subsection (2) insert –
- “(2ZA) A person may not be granted an electricity system operator licence unless the same person – 25
- (a) already holds a licence granted under section 7AA of the Gas Act 1986, or
- (b) is granted such a licence at the same time as the person is granted an electricity system operator licence.” 30
- (7) In subsection (2A), for “(d)” substitute “(da)”.
- (8) In subsection (8), after “term of the licence” insert “and subject to subsection (8A)”.
- (9) After subsection (8) insert –
- “(8A) If a person who holds an electricity system operator licence ceases at any time to hold a licence under section 7AA of the Gas Act 1986, the person is to be treated as ceasing to hold the electricity system operator licence at the same time.” 35

- (10) In section 7A (transfer of licences), after subsection (11) insert—
- “(11ZA) An electricity system operator licence may not be transferred to a person unless a licence granted under section 7AA of the Gas Act 1986 is also transferred to the same person at the same time.”

118 Direction for transmission licence to have effect as electricity system operator licence 5

- (1) The Secretary of State may (instead of granting an electricity system operator licence) direct that a pre-commencement transmission licence is to have effect as an electricity system operator licence.
- (2) A direction under this section may provide that a licence that has effect by virtue of the direction includes such terms and conditions as are specified, or of a description specified, in the direction (regardless of whether or the extent to which those terms and conditions were included in the pre-commencement transmission licence). 10
- (3) A direction under this section may provide for the continued effect (in accordance with the direction) of rights, liabilities and obligations that have effect immediately before the relevant date in connection with— 15
- (a) a pre-commencement transmission licence,
- (b) a document maintained in accordance with the conditions of such a licence, or 20
- (c) an agreement that gives effect to such a document.
- (4) In subsection (3), “the relevant date” means the date on which the direction takes effect.
- (5) A direction under this section may make— 25
- (a) incidental, consequential, supplementary and transitional provision;
- (b) such amendments relating to the revocation of a pre-commencement transmission licence as the Secretary of State considers appropriate;
- (c) different provision for different purposes.
- (6) Before giving a direction under this section, the Secretary of State must consult— 30
- (a) the GEMA, and
- (b) such other persons as the Secretary of State considers appropriate.
- (7) Subsection (6) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).
- (8) In this Part— 35
- “electricity system operator licence” means a licence under section 6(1)(da) of the Electricity Act 1989 (as inserted by section 117);
- “pre-commencement transmission licence” means a licence under section 6(1)(b) of the Electricity Act 1989 that is in force immediately before this section comes into force. 40

119 Licensing of gas system planning activity

- (1) The Gas Act 1986 is amended as follows.
- (2) In section 5 (prohibition on unlicensed activities), in subsection (1)–
- (a) omit the “or” at the end of paragraph (c);
 - (b) after that paragraph insert– 5
 - “(ca) carries out planning and forecasting functions of the Independent System Operator and Planner;”;
 - (c) after subsection (10) insert–
 - “(10A) In subsection (5)(1)(ca), “planning and forecasting functions of the Independent System Operator and Planner” means functions that– 10
 - (a) are conferred by or by virtue of an enactment on a person who is designated under section 113(1) of the Energy Act 2022, and
 - (b) relate to strategic planning and forecasting in connection with the development of pipe-line systems operated by gas transporters for the conveyance of gas.” 15
- (3) After section 7A insert–
- “7AA Licensing of a person carrying out gas system planner functions**
- (1) Subject to subsections (3) and (4), the Authority may grant a licence authorising a person to carry out planning and forecasting functions of the Independent System Operator and Planner (“a gas system planner licence”). 20
 - (2) Subject to subsection (4), the Secretary of State may grant a gas system planner licence. 25
 - (3) The first gas system planner licence may only be granted by the Secretary of State.
 - (4) A person may not be granted a gas system planner licence unless either of the following paragraphs applies to the person–
 - (a) the person– 30
 - (i) already holds an electricity system operator licence, or
 - (ii) is treated as holding such a licence by virtue of a direction under section 118 of the Energy Act 2022;
 - (b) the person is granted an electricity system operator licence, or is treated by virtue of a direction under section 118 of the Energy Act 2022 as having been granted such a licence, at the same time as the person is granted a gas system planner licence. 35
 - (5) In this section–
 - “electricity system operator licence” means a licence under section 6(1)(da) of the Electricity Act 1989; 40

“planning and forecasting functions of the Independent System Operator and Planner” has the meaning given by section 5(10A).”

- (4) In section 7B (licences: general) –
- (a) in subsection (3), after “contained in it” insert “and subject to subsection (3A)”;
 - (b) after subsection (3) insert –
“(3A) If a person who holds a gas system planner licence ceases at any time to hold a licence under section 6(1)(da) of the Electricity Act 1989, the person is to be treated as ceasing to hold the gas system planner licence at the same time.”
- (5) In section 8AA (transfer of licences), after subsection (11) insert –
“(11ZA) A gas system planner licence may not be transferred to a person unless a licence granted under section 6(1)(da) of the Electricity Act 1989 is also transferred to the same person at the same time.”

120 Modification of licences etc

- (1) A relevant authority may modify –
- (a) the conditions of a particular relevant licence;
 - (b) the standard conditions of relevant licences of a particular type;
 - (c) a relevant document.
- (2) A relevant authority may revoke a pre-commencement transmission licence where –
- (a) the licence authorises the holder to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place, and
 - (b) the first electricity system operator licence has been granted to a person.
- (3) A relevant authority may exercise the power under subsection (1) or (2) only –
- (a) in preparation for the designation of a person under section 113(1), or
 - (b) in connection with or in consequence of the designation of a person under that provision.
- (4) A relevant authority may also exercise the power under subsection (1) where –
- (a) the operation or management of a relevant document is affected by steps taken in connection with the designation of a person under section 113(1) or by the preparation for such a designation, and
 - (b) the authority considers it appropriate to exercise the power in connection with the operation or management of a relevant document.

- (5) The Secretary of State may direct the GEMA to exercise the power under subsection (1) or (2) if the Secretary of State considers it appropriate for the GEMA to exercise that power.
- (6) A relevant authority may not exercise the power under subsection (1) or (2) after the end of the period of 3 years beginning with the day on which the first designation under section 113(1) has effect. 5
- (7) In this section—
 “pre-commencement transmission licence” has the same meaning as in section 118;
 “relevant authority” means the Secretary of State or the GEMA; 10
 “relevant document” means a document maintained in accordance with the conditions of a relevant licence.

121 Procedure relating to modifications under section 120

- (1) Before making a modification under section 120, a relevant authority must—
 (a) publish a notice about the proposed modification, 15
 (b) send a copy of the notice to the persons listed in subsection (2), and
 (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect.
- (2) The persons mentioned in subsection (1)(b) are— 20
 (a) each relevant licence holder;
 (b) the GEMA (where the relevant authority is the Secretary of State) or the Secretary of State (where the relevant authority is the GEMA);
 (c) the National Association of Citizens Advice Bureaux;
 (d) the Scottish Association of Citizens Advice Bureaux; 25
 (e) Consumer Scotland;
 (f) the General Consumer Council for Northern Ireland, unless the relevant authority does not consider it appropriate for the Council to be sent a copy of the notice in a particular case;
 (g) where the proposed modification relates to a licence for the purposes of section 5 of the Gas Act 1986, the Health and Safety Executive; 30
 (h) such other persons as the relevant authority considers appropriate.
- (3) A notice under subsection (1) must—
 (a) state that the relevant authority proposes to make a modification;
 (b) set out the proposed modification and its effect; 35
 (c) specify the date from which the relevant authority proposes that the modification will have effect;
 (d) state the reasons why the relevant authority proposes to make the modification.

- (4) If, after complying with subsections (1) to (3) in relation to a modification, the relevant authority decides to make the modification, it must publish a notice about the decision.
- (5) A notice under subsection (4) must –
- (a) state that the relevant authority has decided to make the modification; 5
 - (b) set out the modification and its effect;
 - (c) specify the date from which the modification has effect;
 - (d) state how the relevant authority has taken account of any representations made in the period specified in the notice under subsection (1); 10
 - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (6) A notice under this section about a modification or decision must be published in such manner as the relevant authority considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision. 15
- (7) References in this section to the making of a modification, in relation to a relevant licence, include references to the revocation of the licence.
- (8) In this section, “relevant licence holder” –
- (a) in relation to the modification of standard conditions of relevant licences of any type, means the holder of a licence of that type –
 - (i) that is to be modified by the inclusion of a new standard condition, or
 - (ii) that includes any standard conditions to which the modification relates that are in effect at the end of the period specified by virtue of subsection (1)(c); 25
 - (b) in relation to the modification of a condition of a particular relevant licence (other than a standard condition), means the holder of that licence;
 - (c) in relation to the modification of a document maintained in accordance with the conditions of a relevant licence of a particular type, means the holder of a relevant licence of that type; 30
 - (d) in relation to the revocation of a relevant licence, means the holder of that licence.
- (9) In this section, “relevant authority” means the Secretary of State or the GEMA. 35

Advice, analysis and information

122 Provision of advice, analysis or information

- (1) The ISOP must, so far as reasonably practicable, comply with a request by a person within subsection (2) for the provision of advice, analysis or information to the person in connection with – 40

- (a) any of the ISOP’s functions,
 - (b) any of the objectives listed in section 114(1), or
 - (c) any of the matters listed in section 115(1).
- (2) The persons within this subsection are—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975: see section 8(1) of that Act); 5
 - (b) the GEMA.
- (3) The ISOP must, so far as reasonably practicable, comply with a request made under subsection (1) within such period, and in such form and manner, as the person making the request may reasonably require. 10

123 Power to require information from regulated persons etc

- (1) The ISOP may by notice request from a person within subsection (2) such information as the ISOP reasonably requires in connection with the exercise of any of its functions.
- (2) A person is within this subsection if— 15
- (a) the person carries out a relevant activity, or
 - (b) the ISOP reasonably considers that the person intends to carry out a relevant activity.
- (3) A person to whom a request is made under subsection (1) must, so far as reasonably practicable, provide the requested information within such period, and in such form and manner, as may be specified in the notice. 20
- (4) Where a requirement under subsection (3) is imposed on a regulated person (as defined by section 25(8) of the Electricity Act 1989), it is enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 25 of that Act. 25
- (5) Where a requirement under subsection (3) is imposed on a regulated person (as defined by section 28(8) of the Gas Act 1986), it is enforceable by the GEMA as if it were a relevant requirement imposed on the person for the purposes of section 28 of that Act.
- (6) Where neither of subsections (4) and (5) applies, the duty imposed under subsection (3) on a person is enforceable by the ISOP in civil proceedings— 30
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief. 35
- (7) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (within the meaning of the Data Protection Act 2018 - see section 3 of that Act).
In determining whether a disclosure would do so, the duty imposed by subsection (3) is to be taken into account. 40

124 Duty to keep developments in energy sector under review

The ISOP must keep under review developments relating to the energy sector that may be relevant to the carrying out of any of the ISOP's functions.

Transfers, pensions and financial assistance

125 Transfers

5

Schedule 6 contains –

- (a) in Part 1, provision about transfer schemes relating to the ISOP;
- (b) in Part 2, related provision about transfers and other provision in connection with the designation of a person as the ISOP.

126 Pension arrangements

10

Schedule 7 contains provision about pension arrangements in connection with the ISOP.

127 Financial assistance for the ISOP

- (1) The Secretary of State may provide financial assistance to the ISOP.
- (2) Financial assistance under this section may be provided in any form and in particular may be provided by way of –
 - (a) grant,
 - (b) loan,
 - (c) guarantee or indemnity, or
 - (d) the acquisition of shares in or securities of a body corporate. 20
- (3) Financial assistance under this section may be provided subject to such conditions as the Secretary of State considers appropriate (which may include conditions about repayment with or without interest or other return).

128 Cross-sectoral funding

- (1) In section 7 of the Electricity Act 1989 (conditions of licences: general), in subsection (3A) –
 - (a) for “or a distribution licence” substitute “, a distribution licence or an electricity system operator licence”;
 - (b) in paragraph (a), for “his charges for the transmission or distribution of electricity” substitute “the charges payable to the holder in connection with the transmission or distribution of electricity, or in connection with the exercise of any other functions under or by virtue of the licence,”; 30
 - (c) in paragraph (b), for “licence holders” substitute “holders of licences under section 6 or under Part 1 of the Gas Act 1986”. 35

- (2) In section 9 of that Act (general duties of licence holders), after subsection (2A) insert –
- “(2B) The conditions of a licence held by a person to which a duty imposed by subsection (1) or (2) applies may include a condition requiring the person, in performing the duty, to have regard to the interests of existing and future consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986).” 5
- (3) In section 7B of the Gas Act 1986 (licences: general), in subsection (5)(b) –
- (a) after “section 7” insert “or 7AA”;
- (b) in sub-paragraph (i), for “his charges for the conveyance of gas” substitute “the charges payable to the holder in connection with the conveyance of gas, or in connection with the exercise of any other functions under or by virtue of the licence,”; 10
- (c) in sub-paragraph (ii), for the words from “licences under” to “above” substitute “licences under this Part or under section 6 of the Electricity Act 1989”. 15
- (4) In section 9 of that Act (general powers and duties of gas transporters), after subsection (2) insert –
- “(2A) The conditions of a licence held by a gas transporter may include a condition requiring the gas transporter, in performing a duty under subsection (1), (1A) or (2), to have regard to the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (within the meaning of the Electricity Act 1989).” 20

Other 25

129 Principal objective and general duties of Secretary of State and GEMA under Part 4

- (1) Sections 3A to 3D of the Electricity Act 1989 and sections 4AA to 4B of the Gas Act 1986 (principal objective and general duties) apply in relation to the functions of the Secretary of State under sections 113 and 118 as they apply in relation to functions under Part 1 of the Act in question. 30
- (2) Where the Secretary of State or the GEMA has functions under section 120, 121 or 123 in relation to a licence under section 6(1) of the Electricity Act 1989, sections 3A to 3D of that Act apply in relation to those functions as they apply in relation to functions under Part 1 of that Act. 35
- (3) Where the Secretary of State or the GEMA has functions under section 120, 121 or 123 in relation to a licence under section 7, 7ZA, 7A, 7AA, 7AB or 7AC of the Gas Act 1986, sections 4AA to 4B of that Act apply in relation to those functions as they apply in relation to functions under Part 1 of that Act.

130 Minor and consequential amendments

Schedule 8 contains further amendments to the Electricity Act 1989 and the Gas Act 1986.

131 Interpretation of Part 4

- (1) In this Part – 5
- “distribution system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act);
 - “electricity system operator licence” has the meaning given by section 118(8);
 - “gas” has the same meaning as in Part 1 of the Gas Act 1986 (see section 48(1) of that Act); 10
 - “relevant activity” has the meaning given by section 114(5);
 - “relevant licence” means a licence for the purposes of section 4 of the Electricity Act 1989 or section 5 of the Gas Act 1986 (prohibitions on unlicensed activities); 15
 - “transmission system” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 4(4) of that Act).
- (2) References in this Part to the distribution, generation, supply or transmission of electricity are to be construed in accordance with section 4(4) of the Electricity Act 1989. 20
- (3) References in this Part to the ISOP’s functions include references to –
- (a) any function of a kind described in section 112(2), including any function conferred on the ISOP by or by virtue of a relevant licence or a document maintained in accordance with the conditions of such a licence; 25
 - (b) any other activity that a person for the time being designated as the ISOP carries out wholly or partly as a result of the designation (whether or not the person is required to carry out the activity);
 - (c) any function or activity that is ancillary to the carrying out of a function within paragraph (a) or an activity within paragraph (b). 30

132 Regulations under Part 4

Regulations under this Part are subject to the negative procedure.

PART 5

GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES

*Key definitions for Part***133 Designation of codes etc**

- (1) In this Part, “designated document” means a document that— 5
- (a) is maintained in accordance with the conditions of a relevant licence, and
 - (b) is designated for the purposes of this Part by notice given by the Secretary of State.
- (2) The designation of a document has effect from the time specified in the notice under subsection (1)(b). 10
- (3) A notice under subsection (1)(b) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the designation.
- (4) The Secretary of State may revoke the designation of a document under this section. 15
- (5) The Secretary of State may not designate a document, or revoke the designation of a document, except so as to give effect to a recommendation of the GEMA.
- (6) Before making a recommendation to the Secretary of State for the purposes of subsection (5), the GEMA must consult such persons as it considers appropriate. 20
- (7) Subsection (6) does not apply in relation to the designation of a document where, immediately before being designated, the document is (or is treated as) a qualifying document within the meaning of Schedule 9. 25

134 Meaning of “code manager” and “code manager licence”

- (1) In this Part, “code manager”, in relation to a designated document, means the holder of a code manager licence in respect of the document.
- (2) In this Part, “code manager licence” means a licence under section 7AC of the Gas Act 1986 or section 6(1)(g) of the Electricity Act 1989. 30
- (3) See sections 136 and 137, which contain amendments to the Gas Act 1986 and the Electricity Act 1989 in relation to the licences mentioned in subsection (2).

135 Designation of central systems

- (1) In this Part, “designated central system” means a central system that is designated for the purposes of this Part by notice given by the Secretary of State.
- (2) “Central system” means an information technology system which has one or both of the following functions—
 - (a) to support the operation of the provisions of one or more designated documents;
 - (b) to process, transmit or store data in connection with the operation of the provisions of one or more designated documents.
- (3) The designation of a central system has effect from the time specified in the notice under subsection (1).
- (4) A notice under subsection (1) in relation to a central system must also specify the person (referred to in this Part as the “responsible body”) who is responsible, for the purposes of this Part, for operating or procuring the operation of the central system.
- (5) A notice under subsection (1) must be published in such manner as the Secretary of State considers appropriate for bringing it to the attention of those likely to be affected by the designation.
- (6) The Secretary of State may revoke the designation of a central system under this section.
- (7) The Secretary of State may not designate a central system, or revoke the designation of a central system, except so as to give effect to a recommendation of the GEMA.
- (8) Before making a recommendation to the Secretary of State for the purposes of subsection (7), the GEMA must consult such persons as it considers appropriate.
- (9) Subsection (8) does not apply in relation to the designation of a central system where—
 - (a) immediately before being designated, the central system is a qualifying central system within the meaning of Schedule 9, and
 - (b) the designation does not involve any change to the responsible body in relation to the central system.
- (10) The Secretary of State may by notice provide—
 - (a) that the person who is the responsible body in relation to a designated central system is to cease to be the responsible body in relation to that system, and
 - (b) that a person specified in a notice under this paragraph is instead to be the responsible body in relation to the designated central system.
- (11) The Secretary of State may not give a notice under subsection (10) except so as to give effect to a recommendation of the GEMA.

*Licensing and selection of code manager***136 Licence under Gas Act 1986 for performance of code management function**

- (1) Part 1 of the Gas Act 1986 is amended as follows.
- (2) Section 5 (prohibition on unlicensed activities) is amended as follows.
- (3) After subsection (1)(d) insert “ or 5
 - (e) performs the function of code manager in relation to a designated gas licence document (see further subsections (11A) and (11B)),”.
- (4) After subsection (11) insert – 10
 - “(11A) A reference in this Part to a person (“P”) performing the function of code manager in relation to a designated gas licence document is a reference to making arrangements, with the persons to whom subsection (11B) applies, under which P is responsible for the governance of the document.
 - (11B) This subsection applies to the holder of a licence for the purposes of section 5 where a condition of the licence – 15
 - (a) requires the holder to comply with, or to enter into arrangements that conform with, the designated gas licence document in question, or
 - (b) imposes obligations on the holder that do not apply to the holder where the holder complies with that document.” 20
- (5) In subsection (12) – 25
 - (a) omit the “and” after the definition of “relevant information”;
 - (b) at the appropriate place insert –
““designated gas licence document” means a document that is – 25
 - (a) maintained in accordance with the conditions of a licence for the purposes of section 5, and
 - (b) designated under section 133 of the Energy Act 2022;”.
- (6) After section 7AB insert – 30
“7AC Licensing of a person performing code manager function 30
 - (1) The Authority may grant a licence (“a code manager licence”) authorising a person to perform the function of code manager in respect of a designated gas licence document.
 - (2) Where a designated gas licence document is also a designated electricity licence document, a person may not be granted a code manager licence in respect of the document unless the same person is at the same time granted a licence under section 6(1)(g) of the Electricity Act 1989. 35

- (3) In this section—
“designated electricity licence document” has the same meaning as in section 4 of the Electricity Act 1989;
“designated gas licence document” has the same meaning as in section 5.” 5
- (7) Section 7B (licences: general) is amended as follows.
- (8) In subsection (5A)—
(a) after “smart meter communication licence” (in the first place it occurs) insert “or in a code manager licence”;
(b) for “smart meter communication licence” (in the second place it occurs) substitute “a licence of the same type”. 10
- (9) In subsection (5B)—
(a) for “Secretary of State or the Authority” substitute “relevant authority”;
(b) in paragraph (b)(ii), after “licence” insert “or (in the case of an application for a code manager licence) apply for a licence otherwise than as part of a competition”. 15
- (10) In subsection (5C), after “smart meter communication licence” insert “or in a code manager licence”.
- (11) In subsection (5D), for “the Secretary of State or the Authority” substitute “the relevant authority”. 20
- (12) In subsection (5E)—
(a) in paragraph (a), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”;
(b) in paragraph (b), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”. 25
- (13) After subsection (5F) insert—
“(5FA) In subsections (5B) to (5E), “the relevant authority” means—
(a) in relation to a smart meter communication licence, the Secretary of State or the Authority;
(b) in relation to a code manager licence, the Authority.” 30
- (14) In section 8AA (transfer of licences), after subsection (11A) insert—
“(11B) Where the holder of a code manager licence is also the holder of a licence under section 6(1)(g) of the Electricity Act 1989, the code manager licence may not be transferred to a person unless the licence under section 6(1)(g) of that Act is transferred to the same person at the same time.” 35

137 Licence under Electricity Act 1989 for performance of code management function

- (1) Part 1 of the Electricity Act 1989 is amended as follows.

- (2) Section 4 (prohibition on unlicensed supply, etc) is amended as follows.
- (3) In subsection (1)–
- (a) omit the “or” after paragraph (d);
 - (b) after paragraph (e) insert “ or
 - (f) performs the function of code manager in relation to a designated electricity licence document (see further subsections (3H) and (3I)),”.
- (4) After subsection (3G) insert–
- “(3H) A reference in this Part to a person (“P”) performing the function of code manager in relation to a designated electricity licence document is a reference to making arrangements, with the persons to whom subsection (3I) applies, under which P is responsible for the governance of the document.
- (3I) This subsection applies to the holder of a licence for the purposes of section 4 where a condition of the licence requires the holder to comply with the designated electricity licence document in question.”
- (5) In subsection (6), at the appropriate place insert–
- ““designated electricity licence document” means a document that is–
- (a) maintained in accordance with the conditions of a licence for the purposes of section 4, and
 - (b) designated under section 133 of the Energy Act 2022;”.
- (6) Section 6 (licences authorising supply, etc) is amended as follows.
- (7) In subsection (1)–
- (a) omit the “or” after paragraph (e);
 - (b) after paragraph (f) insert “, or
 - (g) a licence authorising a person to perform the function of code manager in relation to a designated electricity licence document (“a code manager licence”).”
- (8) After subsection (2B) insert–
- “(2C) Where a designated electricity licence document is also a designated gas licence document, a person may not be granted a code manager licence in relation to the document unless the same person is at the same time granted a licence under section 7AC of the Gas Act 1986.”
- (9) For subsection (10) substitute–
- “(10) In this section–
- “designated electricity licence document” has the same meaning as in section 4;
 - “designated gas licence document” has the same meaning as in section 5 of the Gas Act 1986;

“premises” has the same meaning as in section 4.”

- (10) Section 7 (conditions of licences: general) is amended as follows.
- (11) In subsection (3B)–
- (a) after “smart meter communication licence” (in the first place it occurs) insert “or in a code manager licence”; 5
 - (b) for “smart meter communication licence” (in the second place it occurs) substitute “a licence of the same type”.
- (12) In subsection (3C)–
- (a) for “Secretary of State or the Authority” substitute “relevant authority”;
 - (b) in paragraph (b)(ii), after “licence” insert “or (in the case of an application for a code manager licence) apply for a licence otherwise than as part of a competition”. 10
- (13) In subsection (3D), after “smart meter communication licence” insert “or in a code manager licence”.
- (14) In subsection (3E), for “the Secretary of State or the Authority” substitute “the relevant authority”. 15
- (15) In subsection (3F)–
- (a) in paragraph (a), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”;
 - (b) in paragraph (b), for “Secretary of State or the Authority (as appropriate)” substitute “relevant authority”. 20
- (16) In subsection (3G)(a), after “licence” insert “or (as the case may be) code manager licence”.
- (17) After subsection (3G) insert–
- “(3GA) In subsections (3C) to (3F), “the relevant authority” means– 25
- (a) in relation to a smart meter communication licence, the Secretary of State or the Authority;
 - (b) in relation to a code manager licence, the Authority.”
- (18) In section 7A (transfer of licences), after subsection (11A) insert–
- “(11B) Where the holder of a code manager licence is also the holder of a licence under section 7AC of the Gas Act 1986, the code manager licence may not be transferred to a person unless the licence under section 7AC of that Act is transferred to the same person at the same time.” 30
- 138 Selection of code manager** 35
- (1) The GEMA must determine whether the selection of the person who is to be the code manager in relation to a designated document is to be made–
- (a) on a non-competitive basis, in accordance with regulations made by the Secretary of State under section 139, or

- (b) on a competitive basis, in accordance with regulations made by the GEMA under section 140.
- (2) The Secretary of State may by regulations make—
 - (a) provision about the making of determinations under subsection (1) by the GEMA (which may include provision specifying criteria to be applied by the GEMA in making determinations); 5
 - (b) provision enabling the GEMA, in circumstances specified in the regulations, to change the basis on which the selection of a code manager is to be made.
- (3) The Secretary of State may by regulations— 10
 - (a) specify requirements to be met by or in relation to a person in order for the person to be selected as the code manager in relation to a designated document;
 - (b) specify persons, or persons of a particular description, who may or may not be selected to be a code manager in relation to a designated document. 15

139 Selection on a non-competitive basis

- (1) The Secretary of State may by regulations make provision about the selection by the GEMA, otherwise than on a competitive basis, of the person who is to be the code manager in relation to a designated document. 20
- (2) Regulations under this section may make provision by reference to a determination by the GEMA or to the opinion of the GEMA as to any matter.
- (3) Regulations under this section must make provision so as to ensure that a person (“P”) may not be selected to be the code manager in relation to a designated document unless the GEMA is satisfied that P would not, if selected, have a financial or other interest likely to prejudice the discharge by P of the functions of code manager. 25
- (4) The provision that may be made by virtue of subsection (1) includes provision for the selection by the GEMA of a person (other than an individual) formed by the GEMA. 30

140 Selection on a competitive basis

- (1) The GEMA may by regulations make provision for a determination by the GEMA on a competitive basis of the person who is to be selected to be the code manager in relation to a designated document.
- (2) Regulations under this section may make provision about the procedure relating to the making of such a determination, which may include provision— 35
 - (a) in prescribed cases, for the publication of a proposal to select a code manager in relation to a designated document;
 - (b) for the inclusion in such a proposal of an invitation to apply for selection; 40

- (c) imposing conditions in relation to the making of applications (whether in pursuance of a proposal published as mentioned in paragraph (a) or otherwise);
 - (d) restricting the making of applications and imposing requirements as to the period within which they must be made; 5
 - (e) for regulating the manner in which applications are considered or determined;
 - (f) authorising or requiring the GEMA, when determining whom to select, to have regard to the person's suitability for being selected.
- (3) Regulations under this section may make provision by reference to a determination by the GEMA or to the opinion of the GEMA as to any matter. 10
- (4) Regulations under this section must make provision so as to ensure that a person (“P”) may not be selected to be the code manager in relation to a designated document unless the GEMA is satisfied that P would not, if selected, have a financial or other interest likely to prejudice the discharge by P of the functions of code manager. 15
- (5) The approval of the Secretary of State is required for the making of regulations under this section.
- (6) In this section, “prescribed” means prescribed by or determined in accordance with regulations made by the GEMA. 20

Strategic direction statement for designated documents

141 Strategic direction statement

- (1) The GEMA must, each year, prepare and publish a statement setting out a strategic direction for designated documents.
- (2) A statement prepared and published under subsection (1) is referred to in this Part as a “strategic direction statement”. 25
- (3) A strategic direction statement must in particular –
- (a) contain a strategic assessment of government policies, and of developments relating to the energy sector, that the GEMA considers will or may require the making of modifications to designated documents; 30
 - (b) cover such other matters relating to designated documents as the Secretary of State may specify in regulations.
- (4) In preparing a strategic direction statement, the GEMA must have regard to any advice given to it by the Independent System Operator and Planner so far as relevant to the matters referred to in subsection (3). 35
- (5) Before publishing a strategic direction statement in any year, the GEMA must –
- (a) publish a notice containing a draft of the document,

- (b) send a copy of the notice to the persons listed in subsection (6), and
 - (c) consider any representations about the draft made within the period specified in the notice.
- (6) The persons referred to in subsection (5)(b) are—
- (a) the Secretary of State; 5
 - (b) the National Association of Citizens Advice Bureaux;
 - (c) the Scottish Association of Citizens Advice Bureaux;
 - (d) Consumer Scotland.
- (7) A notice under subsection (5) must be published by the GEMA in whatever way it considers appropriate for the purpose of bringing the matters contained in it to the attention of persons likely to be affected by them. 10
- 142 Transfer of functions under section 141 to Independent System Operator and Planner**
- (1) The Secretary of State may by regulations amend section 141 so as to provide for functions under that section to be exercisable by the Independent System Operator and Planner (instead of by the GEMA). 15
- (2) Before making regulations under this section, the Secretary of State must consult—
- (a) the GEMA,
 - (b) the Independent System Operator and Planner, and 20
 - (c) any other persons whose interests are likely to be affected by the proposal.
- (3) Regulations under this section—
- (a) must repeal section 141(4);
 - (b) must add the GEMA to the list of persons in section 141(6); 25
 - (c) may make such other amendments to section 141 as the Secretary of State considers appropriate.

Modifications and directions

143 Modification of designated documents by GEMA

- (1) The GEMA may modify a designated document if any of subsections (2) to (6) applies. 30
- (2) This subsection applies where the GEMA considers that—
- (a) the designated document needs to be modified as a matter of urgency,
 - (b) the making of the modification is likely to be delayed if done in accordance with the normal modification procedures for the document, and 35
 - (c) such a delay would have adverse effects on—
 - (i) consumers, or

- (ii) any person with rights or obligations under the document, other than the GEMA.
- (3) This subsection applies where the GEMA considers that a financial or other interest of the code manager in respect of the matter to which the modification relates is likely to prejudice the making of the modification if done in accordance with the normal modification procedures for the document. 5
- (4) This subsection applies where the GEMA considers that—
 - (a) the modification is required for the purpose of implementing a strategic direction statement under section 141, and
 - (b) the nature of the modification (for example, its complexity) is such that it needs to be made under this section rather than in accordance with the normal modification procedures for the designated document. 10
- (5) This subsection applies where the GEMA considers that the modification is required in connection with the incorporation of the whole or part of the provision made by the designated document into another document (whether or not a designated document). 15
- (6) This subsection applies where the GEMA considers that the modification is required in consequence of the exercise of any power conferred by Schedule 9 (transitional provisions) in relation to a different document.
- (7) The Secretary of State may by regulations make— 20
 - (a) provision specifying requirements to be met in relation to the exercise of the power under subsection (1);
 - (b) provision supplementing subsections (2) to (6).
- (8) References in this section to the normal modification procedures for a designated document are to provision, relating to the procedure for modifying the document, that— 25
 - (a) is contained in the document, or
 - (b) applies pursuant to any condition of a licence in accordance with which the document is maintained.
- 144 Modification under section 143** 30
- (1) Before making a modification under section 143, the GEMA must—
 - (a) publish a notice about the proposed modification,
 - (b) send a copy of the notice to the persons listed in subsection (2), and
 - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect. 35
- (2) The persons mentioned in subsection (1)(b) are—
 - (a) the Secretary of State,
 - (b) the code manager in relation to the designated document to which the proposed modification relates, and 40

- (c) such other persons as the GEMA considers appropriate.
- (3) A notice under subsection (1) must –
- (a) state that the GEMA proposes to make a modification;
 - (b) set out the proposed modification and its effect;
 - (c) specify the date from which the GEMA proposes that the modification will have effect; 5
 - (d) state –
 - (i) why the GEMA is seeking to make the modification under section 143 (by reference to whichever of subsections (2) to (6) of section 143 applies), and 10
 - (ii) the reasons for the proposed modification.
- (4) If, within the period specified by virtue of subsection (1)(c), the Secretary of State directs the GEMA not to make the proposed modification, the GEMA must comply with the direction.
- (5) If, after complying with subsections (1) to (3) in relation to a proposed modification, the GEMA decides to make a modification, it must publish a notice about the decision. 15
- (6) A notice under subsection (5) must –
- (a) state that the GEMA has decided to make the modification;
 - (b) set out the modification and its effect; 20
 - (c) specify the date from which the modification has effect;
 - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under subsection (1);
 - (e) state the reason for any differences between the modification set out in the notice and the proposed modification. 25
- (7) A notice under this section about a proposed modification or a decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision.
- 145 Directions relating to designated central systems** 30
- (1) The GEMA may give a direction to the responsible body in relation to a designated central system for the purpose of ensuring that the body –
- (a) complies with its obligations under a relevant designated document, or
 - (b) takes such steps as the GEMA considers may be necessary for the efficient operation or implementation of the provisions of a relevant designated document. 35
- (2) When determining whether to give a direction under this section, the GEMA must have regard to the ability of the responsible body to whom the direction would be given – 40

- (a) to recover any costs reasonably incurred by the body in complying with the direction, and
 - (b) to comply with the direction without contravening any obligations of the body under a relevant designated document or in relation to the operation of the designated central system. 5
- (3) A responsible body must comply with a direction given to it under this section.
- (4) In this section and section 146, “relevant designated document”, in relation to a designated central system, means a designated document in respect of which the central system has a function mentioned in section 135(2). 10

146 Directions under section 145

- (1) Before giving a direction under section 145, the GEMA must—
 - (a) publish a notice about the proposed direction,
 - (b) send a copy of the notice to the persons listed in subsection (2), and
 - (c) consider any representations made within the period specified in the notice about the proposed direction or the date from which it would take effect. 15
- (2) The persons mentioned in subsection (1)(b) are—
 - (a) the responsible body to whom the direction is proposed to be given, and
 - (b) the code manager in relation to the relevant designated document. 20
- (3) A notice under subsection (1) must—
 - (a) state that the GEMA proposes to give a direction;
 - (b) set out the proposed direction and its effect;
 - (c) specify the date from which the GEMA proposes that the direction will have effect; 25
 - (d) state the reasons why the GEMA proposes to give the direction.
- (4) If, after complying with subsections (1) to (3) in relation to a direction, the GEMA decides to give a direction, it must publish a notice about the decision.
- (5) A notice under subsection (4) must—
 - (a) state that the GEMA has decided to give the direction;
 - (b) set out the direction and its effect;
 - (c) specify the date from which the direction has effect;
 - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under subsection (1); 30
 - (e) state the reason for any differences between the direction set out in the notice and the proposed direction. 35
- (6) A notice under this section about a proposed direction or a decision must be published in such manner as the GEMA considers appropriate for bringing

it to the attention of those likely to be affected by the making of the direction or decision.

General objectives and reports

- 147 Principal objective and general duties of Secretary of State and GEMA under Part 5** 5
- Sections 4AA to 4B of the Gas Act 1986 and sections 3A to 3D of the Electricity Act 1989 (principal objective and general duties) apply in relation to the functions under this Part of the Secretary of State and of the GEMA as they apply in relation to functions of the Secretary of State and of the GEMA under Part 1 of that Act. 10
- 148 GEMA’s annual report to cover matters relating to designated documents**
- (1) Section 5 of the Utilities Act 2000 (annual and other reports of the GEMA) is amended as follows.
- (2) After subsection (3) insert –
- “(3A) The annual report for each year must also include an overview of – 15
- (a) developments relating to documents designated for the purposes of Part 5 of the Energy Act 2022 (governance of gas and electricity industry codes);
- (b) decisions made by the Authority during the year in relation to such documents, including details of any modifications made 20
under section 143 of the Energy Act 2022.”

Other

- 149 Regulations under Part 5**
- (1) Regulations under this Part are subject to the negative procedure, subject to subsection (2). 25
- (2) Regulations under section 142 are subject to the affirmative procedure.
- 150 Interpretation of Part 5**
- In this Part –
- “central system” and “designated central system” have the meaning given by section 135; 30
- “code manager”, in relation to a designated document, has the meaning given by section 134(1);
- “code manager licence” has the meaning given by section 134(2);
- “designated document” has the meaning given by section 133(1);

“the Independent System Operator and Planner” means the person for the time being designated under section 113(1);

“relevant licence” means a licence for the purposes of section 4 of the Electricity Act 1989 or section 5 of the Gas Act 1986 (prohibitions on unlicensed activities);

“responsible body”, in relation to a designated central system, has the meaning given by section 135(4).

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151 Transitional provision and pension arrangements

- (1) Schedule 9 contains transitional provision in connection with this Part.
- (2) Schedule 10 contains provision about pension arrangements in connection with this Part.

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152 Minor and consequential amendments

Schedule 11 contains minor and consequential amendments in connection with this Part.

PART 6

15

MARKET REFORM AND CONSUMER PROTECTION

Competition

153 Competitive tenders for electricity projects

Schedule 12 contains amendments of the Electricity Act 1989 in connection with enabling competitive tendering for electricity projects.

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154 Mergers of energy network enterprises

- (1) Schedule 13 makes provision about mergers of energy network enterprises.
- (2) The Secretary of State must carry out a review of the operation of sections 68A to 68F of, and Schedule 5A to, the Enterprise Act 2002 (inserted by Schedule 13) before the end of the period of 5 years beginning with the day on which paragraph 2 of Schedule 13 to this Act comes into force.
- (3) The Secretary of State must set out the conclusions of the review in a report.
- (4) The report must, in particular—
 - (a) set out the objectives of the provisions subject to review,
 - (b) assess the extent to which those objectives have been achieved, and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which those objectives could be achieved in a way that imposes less regulation.
- (5) The Secretary of State must lay the report before Parliament.

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*Multi-purpose interconnectors***155 Licence required for operation of multi-purpose interconnector**

- (1) Section 4 of the Electricity Act 1989 (prohibition on unlicensed supply etc of electricity) is amended in accordance with subsections (2) to (5).
- (2) In subsection (1) – 5
- (a) omit the “or” after paragraph (d);
- (b) after paragraph (d) insert –
- “(da) participates in the operation of a multi-purpose interconnector; or”.
- (3) After subsection (3C) insert – 10
- “(3CA) A reference in this Part to participating in the operation of a multi-purpose interconnector is a reference to –
- (a) co-ordinating and directing the flow of electricity into or through a multi-purpose interconnector; or
- (b) making a multi-purpose interconnector available for use for the conveyance of electricity, 15
- and a person is not to be regarded as participating in the operation of an interconnector or as participating in the transmission of electricity by reason only of activities constituting participation in the operation of a multi-purpose interconnector.” 20
- (4) In subsection (3D), after “(3C)(b)” insert “and (3CA)(b)”.
- (5) After subsection (3E) insert –
- “(3EA) In this Part “multi-purpose interconnector” means so much of an electric line or other electrical plant as –
- (a) is situated at a place within the jurisdiction of Great Britain; 25
and
- (b) subsists for both –
- (i) the conveyance of electricity (whether in both directions or in only one) between Great Britain and a place within the jurisdiction of another country or territory, and 30
- (ii) the conveyance of electricity generated in offshore waters (whether in both directions or in only one) between a generating station and a substation or another generating station, or between two or more substations.”
- (6) In section 5 of the Electricity Act 1989 (exemptions from prohibition), in subsection (1), after “(d)” insert “, (da)”. 35
- (7) Section 6 of the Electricity Act 1989 (licences authorising supply, etc) is amended in accordance with subsections (8) to (10).
- (8) In subsection (1) –

- (a) omit the “or” after paragraph (e);
 - (b) after paragraph (e) insert—
 - “(ea) a licence authorising a person to participate in the operation of a multi-purpose interconnector (“an MPI licence”); or”.
- (9) After subsection (2A) insert—
- “(2AA) The same person may not be the holder of an MPI licence and the holder of a licence falling within any of paragraphs (a) to (e) of subsection (1).”
- (10) After subsection (6C) insert—
- “(6D) An MPI licence authorising participation in the operation of a multi-purpose connector—
- (a) must specify the multi-purpose interconnector or multi-purpose interconnectors in relation to which participation is authorised;
 - (b) may limit the forms of participation in the operation of a multi-purpose interconnector which are authorised by the licence.”
- (11) In section 64(1) of the Electricity Act 1989 (interpretation of Part 1), at the appropriate place insert—
- ““multi-purpose interconnector” has the meaning given by section 4(3EA);”.

156 Standard conditions for MPI licences

- (1) The Secretary of State must, before subsection (6) comes into force, determine standard conditions for MPI licences.
- (2) Those standard conditions may contain provision—
 - (a) for a standard condition included in an MPI licence not to have effect until brought into operation in such manner, and in such circumstances, as may be specified in or determined under the standard conditions;
 - (b) for the effect of a standard condition included in an MPI licence to be suspended in such manner, and in such circumstances, as may be so specified or determined;
 - (c) for a standard condition included in such a licence the effect of which is for the time being suspended to be brought back into operation in such manner, and in such circumstances, as may be so specified or determined.
- (3) The Secretary of State must publish the standard conditions determined by the Secretary of State under this section.
- (4) The publication must be in such manner as the Secretary of State considers appropriate.

- (5) The standard conditions determined by the Secretary of State have effect subject to any modifications made under –
- (a) Part 1 of the Electricity Act 1989,
 - (b) section 37 or 45 of the Energy Act 2013, or
 - (c) this Act. 5
- (6) In section 8A of Electricity Act 1989 (standard conditions of licences), after subsection (1B) insert –
- “(1C) Subject to subsection (2), each condition which by virtue of section 156 of the Energy Act 2022 is a standard condition for the purposes of MPI licences is incorporated, by reference, in each MPI licence granted on or after the day on which subsection (6) of that section comes into force.” 10
- (7) In this section, “MPI licence” means a licence under section 6(1)(ea) of the Electricity Act 1989 (inserted by section 155 of this Act).
- 157 Operation of multi-purpose interconnectors: independence** 15
- (1) In the italic heading above section 10A of the Electricity Act 1989, after “interconnectors” insert “and multi-purpose interconnectors”.
- (2) After section 10N of the Electricity Act 1989 insert –
- “10NA Electricity transmission and the operation of multi-purpose interconnectors: independence** 20
- (1) A person who, for any qualifying period, holds an MPI licence and participates in the operation of a multi-purpose interconnector must ensure that the person is certified by the Authority under section 10D throughout that period.
 - (2) Sections 10B to 10N apply for the purposes of subsection (1) as they apply for the purposes of section 10A(3), but as if – 25
 - (a) references to an electricity interconnector were references to a multi-purpose interconnector;
 - (b) references to an interconnector licence (or to a licence under section 6(1)(e)) were to an MPI licence (or to a licence under section 6(1)(ea)). 30
 - (3) In this section, “qualifying period” means a period beginning on or after the day on which section 157 of the Energy Act 2022 comes into force.”
- (3) In section 10O(1) of the Electricity Act 1989 (interpretation), for “10N” substitute “10NA”. 35

158 Grant of MPI licences to existing operators

- (1) This section applies where a person holds a licence under section 6(1)(e) of the Electricity Act 1989 (interconnector licence) or an offshore transmission licence on the day on which section 155 of this Act comes into force.
- (2) The Secretary of State has power to grant an MPI licence to that person under section 6 of the Electricity Act 1989. 5
- (3) Sections 6A(5), 7 and 8A of the Electricity Act 1989 (notice of licence and licence conditions) have effect in relation to the grant of a licence by the Secretary of State by virtue of this section as if—
 - (a) references in those provisions to the Authority included references to the Secretary of State, and 10
 - (b) in section 8A—
 - (i) in subsection (4)(b), the words “the Secretary of State,” were omitted, and
 - (ii) subsection (5) were omitted. 15
- (4) Before granting a licence to a person by virtue of this section, the Secretary of State must consult—
 - (a) that person,
 - (b) the GEMA, and
 - (c) such other persons as the Secretary of State considers appropriate. 20
- (5) Subsection (4) may be satisfied by consultation before this section comes into force (as well as by consultation after that time).
- (6) In this section—
 - “MPI licence” means a licence under section 6(1)(ea) of the Electricity Act 1989 (inserted by section 155 of this Act); 25
 - “offshore transmission licence” has the same meaning as in Part 1 of the Electricity Act 1989 (see section 64(1) of that Act).

159 Power to make consequential etc provision

- (1) The Secretary of State may by regulations make consequential, supplementary, incidental, transitional or saving provision in connection with sections 155 to 158. 30
- (2) The provision that may be made by virtue of subsection (1) includes provision amending, repealing or revoking an Act of Parliament or retained direct EU legislation.
- (3) Before making regulations under subsection (1), the Secretary of State must consult—
 - (a) the GEMA, and
 - (b) such other persons as the Secretary of State considers appropriate. 35
- (4) Regulations under subsection (1) are subject to the affirmative procedure.

160 Consequential amendments relating to multi-purpose interconnectors

Schedule 14 contains minor and consequential amendments.

*Domestic gas and electricity tariff cap***161 Extension of domestic gas and electricity tariff cap**

- (1) The Domestic Gas and Electricity (Tariff Cap) Act 2018 is amended as follows. 5
- (2) In section 7 (review of competition for domestic supply contracts)–
- (a) in subsection (3)–
- (i) omit the “and” after paragraph (b);
- (ii) after paragraph (c) insert–
- “(d) if the tariff cap conditions are extended under 10
section 8(3) to have effect for the year 2023, in
that year,
- (e) if the tariff cap conditions are extended under
section 8A(2)(a) to have effect for the year 2024,
in that year, 15
- (f) if the tariff cap conditions are extended under
section 8A(2)(b) to have effect for 2024 and 2025,
in 2025, and
- (g) if, in any year after 2023, the tariff cap conditions
are extended under section 8A(4) to have effect– 20
- (i) for a particular year, in that year;
- (ii) for two years, in the second of those
years.”
- (b) in subsection (4)–
- (i) for “31 August” substitute “30 April”; 25
- (ii) in paragraph (a), for “to have effect for the following year”
substitute “under section 8A”;
- (c) omit subsections (5) and (6).
- (3) At the end of section 8(3)(b) (extension or termination of tariff cap conditions
in 2022), insert “unless extended under section 8A(2)”. 30
- (4) After section 8 insert –

“8A Extension of tariff cap conditions beyond 2023

- (1) This section applies –
- (a) in 2023, if the tariff cap conditions have effect for that year (see
subsection (2)); 35
- (b) in any year after 2023 until the end of which the tariff cap
conditions –
- (i) are extended under subsection (2), or
- (ii) are extended or further extended under subsection (4).

- (2) If, after considering the report produced by the Authority under section 7(4) in the year 2023, the Secretary of State determines that the conditions are not yet in place for effective competition for domestic supply contracts, the Secretary of State must by regulations extend the tariff cap conditions to have effect—
 - (a) for the year 2024, if the Secretary of State considers that there is a significant prospect of the conditions for effective competition for domestic supply contracts being in place before the end of that year;
 - (b) otherwise, for the years 2024 and 2025.
- (3) If the tariff cap conditions are extended under subsection (2), they cease to have effect—
 - (a) in a case within subsection (2)(a), at the end of 2024, or
 - (b) in a case within subsection (2)(b), at the end of 2025,unless extended under subsection (4).
- (4) If, after considering the report produced by the Authority under section 7(4) in a review year, the Secretary of State determines that the conditions are not yet in place for effective competition for domestic supply contracts, the Secretary of State must by regulations extend the tariff cap conditions to have effect—
 - (a) for the year after the review year, where the Secretary of State considers that there is a significant prospect of the conditions for effective competition for domestic supply contracts being in place before the end of the year after the review year;
 - (b) otherwise, for the two years after the review year.
- (5) “Review year” means any year after 2023 in which the Authority is required to carry out a review under section 7.
- (6) If the tariff cap conditions are extended under subsection (4), they cease to have effect—
 - (a) in a case within subsection (4)(a), at the end of the year after the review year, or
 - (b) in a case within subsection (4)(b), at the end of the second year after the review year,unless further extended under subsection (4).
- (7) On the tariff cap conditions ceasing to have effect as provided by this section, the functions of the Authority under section 1 cease to be exercisable.
- (8) Regulations under this section are to be made by statutory instrument.
- (9) A statutory instrument containing regulations under this section must be laid before Parliament not later than—
 - (a) in the case of regulations under subsection (2), 1 July 2023;

- (b) in the case of regulations under subsection (4), 1 July in the review year in question.
- (10) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.” 5
- (5) In section 9(1) (protection for domestic customers after termination tariff cap conditions), after “section 8” insert “or 8A”.
- (6) In section 10(1) (consequential modification of standard supply licence conditions), after “section 8” insert “or 8A”.

Electricity storage 10

162 Electricity storage

In section 4 of the Electricity Act 1989 (prohibition on unlicensed generation etc of electricity), after subsection (3) insert—

- “(3ZA) In subsection (1)(a), the reference to a person who generates electricity includes a reference to a person who generates electricity from stored energy. 15
- (3ZB) In subsection (3ZA), “stored energy” means energy that—
- (a) was converted from electricity, and
 - (b) is stored for the purpose of its future reconversion into electricity.” 20

Reduction targets: carbon emissions and home-heating costs

163 Payment as alternative to complying with certain energy company obligations

- (1) In section 33BC of the Gas Act 1986 (promotion of reductions in carbon emissions: gas transporters and gas suppliers), after subsection (7B) insert—
- “(7C) The order may make provision as to circumstances in which a transporter or supplier may meet the whole or any part of a carbon emissions reduction target by making a buy-out payment. 25
- (7D) In this section, “buy-out payment” means a payment—
- (a) of an amount (“the buy-out price”) determined by the Secretary of State, 30
 - (b) to a person approved by the Administrator (an “approved person”),
 - (c) for a purpose approved by the Administrator (an “approved purpose”).
- (7E) Provision made by virtue of subsection (7C) may include provision about the determination by the Secretary of State of the buy-out price, including provision— 35

- (a) enabling the Secretary of State to set different buy-out prices –
 - (i) for different parts of the period to which the order relates;
 - (ii) for different cases (including different buy-out prices for different transporters or suppliers);
 - (b) requiring the Secretary of State to publish the buy-out price.
 - (7F) If the order makes provision by virtue of subsection (7C), the order may also make provision –
 - (a) as to the procedure to be followed by the Administrator in approving a person as an approved person or a purpose as an approved purpose;
 - (b) specifying criteria by reference to which the Administrator is to determine whether to approve a person or purpose.
 - (7G) Provision made by virtue of subsection (7C) may include further provision about buy-out payments, including in particular provision –
 - (a) as to the procedure to be followed by a transporter or supplier who proposes to make a buy-out payment, including provision –
 - (i) requiring a transporter or supplier to notify the Administrator of specified matters by a specified time;
 - (ii) as to circumstances in which a transporter or supplier must make the buy-out payment to which notification given to the Administrator relates;
 - (iii) about the process for seeking approval of a person as an approved person, or of a purpose as an approved purpose;
 - (b) preventing a transporter or supplier from treating a buy-out payment as a payment pursuant to any other obligation (whether statutory or contractual), or vice versa;
 - (c) setting out circumstances in which a requirement imposed on a transporter or supplier by provision made by virtue of subsection (5)(ba) or (bb) may be –
 - (i) met, in whole or in part, by the making of a buy-out payment;
 - (ii) varied as a result of a buy-out payment;
 - (d) about the effect of provision included in the order by virtue of subsection (7)(c) to (e) on a person’s ability to meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.
 - (7H) Where an order includes provision for the making of a buy-out payment, the references in subsections (5)(be) and (7)(b) to action include a reference to the making of a buy-out payment.”
- (2) In section 33BCA of the Gas Act 1986 (Scottish Ministers’ promotion of reductions in carbon emissions: gas suppliers) –

- (a) in subsection (3)–
- (i) in paragraph (b), after “(7)(a)” insert “, (7C), (7E)”;
 - (ii) after paragraph (c) insert–
 - “(ca) in subsection (7F), for “order makes” is substituted “Secretary of State has made”; 5
 - (cb) in subsection (7G), for “(7C)” is substituted “(7F)”;
 - (cc) in subsection (7H), for “an order includes” is substituted “the Secretary of State has made”;;
 - (iii) in paragraph (g), after “place” insert “other than in subsection (7D)(a)”;
- (b) in subsection (9)(a), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.
- (3) In subsection 33BDA of the Gas Act 1986 (Scottish Ministers’ promotion of reductions in home-heating costs: gas suppliers)–
- (a) in subsection (3)– 15
 - (i) in paragraph (c), after “(7)(a)” insert “, (7C), (7E)”;
 - (ii) after paragraph (d) insert–
 - “(da) in section 33BC(7F) as applied by subsection (4), for “order makes” is substituted “Secretary of State has made”; 20
 - (db) in section 33BC(7G) as applied by subsection (4), for “(7C)” is substituted “(7F)”;
 - (dc) in section 33BC(7H) as applied by subsection (4), for “an order includes” is substituted “the Secretary of State has made”;; 25
 - (iii) in paragraph (h), after “subsection (4)” insert “other than in section 33BC(7D)(a)”;
 - (b) in subsection (9)(b), for “or (7)(a)” substitute “(7)(a), (7C) or (7E)”.
- (4) In section 41A of the Electricity Act 1989 (promotion of reductions in carbon emissions: electricity distributors and electricity suppliers), after subsection (7B) insert– 30
- “(7C) The order may make provision as to circumstances in which a distributor or supplier may meet the whole or any part of a carbon emissions reduction target by making a buy-out payment.
- (7D) In this section, “buy-out payment” means a payment– 35
- (a) of an amount (“the buy-out price”) determined by the Secretary of State,
 - (b) to a person approved by the Administrator (an “approved person”),
 - (c) for a purpose approved by the Administrator (an “approved purpose”). 40

- (7E) Provision made by virtue of subsection (7C) may include provision about the determination by the Secretary of State of the buy-out price, including provision—
- (a) enabling the Secretary of State to set different buy-out prices—
 - (i) for different parts of the period to which the order relates; 5
 - (ii) for different cases (including different buy-out prices for different distributors or suppliers);
 - (b) requiring the Secretary of State to publish the buy-out price.
- (7F) If the order makes provision by virtue of subsection (7C), the order may also make provision— 10
- (a) as to the procedure to be followed by the Administrator in approving a person as an approved person or a purpose as an approved purpose;
 - (b) specifying criteria by reference to which the Administrator is to determine whether to approve a person or purpose. 15
- (7G) Provision made by virtue of subsection (7C) may include further provision about buy-out payments, including in particular provision—
- (a) as to the procedure to be followed by a distributor or supplier who proposes to make a buy-out payment, including provision— 20
 - (i) requiring a distributor or supplier to notify the Administrator of specified matters by a specified time;
 - (ii) as to circumstances in which a distributor or supplier must make the buy-out payment to which notification given to the Administrator relates; 25
 - (iii) about the process for seeking approval of a person as an approved person, or of a purpose as an approved purpose;
 - (b) preventing a distributor or supplier from treating a buy-out payment as a payment pursuant to any other obligation (whether statutory or contractual), or vice versa; 30
 - (c) setting out circumstances in which a requirement imposed on a distributor or supplier by provision made by virtue of subsection (5)(ba) or (bb) may be— 35
 - (i) met, in whole or in part, by the making of a buy-out payment;
 - (ii) varied as a result of a buy-out payment;
 - (d) about the effect of provision included in the order by virtue of subsection (7)(c) to (e) on a person’s ability to meet the whole or any part of a carbon emissions reduction target by making a buy-out payment. 40

- (7H) Where an order includes provision for the making of a buy-out payment, the references in subsections (5)(be) and (7)(b) to action include a reference to the making of a buy-out payment.”
- (5) In section 41AA of the Electricity Act 1989 (Scottish Ministers’ promotion of reductions in carbon emissions: electricity suppliers) – 5
- (a) in subsection (3) –
- (i) in paragraph (b), after “(7)(a)” insert “, (7C), (7E)”;
- (ii) after paragraph (c) insert –
- “(ca) in subsection (7F), for “order makes” is substituted “Secretary of State has made”; 10
- (cb) in subsection (7G), for “(7C)” is substituted “(7F)”;
- (cc) in subsection (7H), for “an order includes” is substituted “the Secretary of State has made”;;
- (iii) in paragraph (g), after “place” insert “other than in subsection (7D)(a)”;
- (b) in subsection (9)(a), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.
- (6) In subsection 41BA of the Electricity Act 1989 (Scottish Ministers’ promotion of reductions in home-heating costs: electricity suppliers) – 20
- (a) in subsection (3) –
- (i) in paragraph (c), after “(7)(a)” insert “, (7C), (7E)”;
- (ii) after paragraph (d) insert –
- “(da) in section 41A(7F) as applied by subsection (4), for “order makes” is substituted “Secretary of State has made”; 25
- (db) in section 41A(7G) as applied by subsection (4), for “(7C)” is substituted “(7F)”;
- (dc) in section 41A(7H) as applied by subsection (4), for “an order includes” is substituted “the Secretary of State has made”;; 30
- (iii) in paragraph (h), after “subsection (4)” insert “other than in section 41A(7D)(a)”;
- (b) in subsection (9)(b), for “or (7)(a)” substitute “, (7)(a), (7C) or (7E)”.

Smart meters

- 164 Smart meters: extension of time for exercise of powers** 35
- (1) In section 88(5) of the Energy Act 2008 (expiry of power to amend licence conditions etc: smart meters), for “1 November 2023” substitute “1 November 2028”.
- (2) In the Gas Act 1986 –

- (a) in section 8AA(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2023” substitute “1 November 2028”;
 - (b) in section 41HB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2023” substitute “1 November 2028”. 5
- (3) In the Electricity Act 1989 –
- (a) in section 7A(10D) (expiry of provisions requiring proposed transfer of smart meter communication licence to be notified to Secretary of State), for “1 November 2023” substitute “1 November 2028”; 10
 - (b) in section 56FB(2) (time limit for exercise of power to provide for activities connected with smart meters to be licensable activities), for “1 November 2023” substitute “1 November 2028”.
- (4) In the Smart Meters Act 2018, omit section 1.

PART 7 15

HEAT NETWORKS

CHAPTER 1

REGULATION OF HEAT NETWORKS

165 Relevant heat network

- (1) In this Chapter, “relevant heat network” means – 20
- (a) a district heat network, or
 - (b) a communal heat network.
- (2) In this section –
- “communal heat network” means a heat network by means of which heating, cooling or hot water is supplied only to a single building divided into separate premises or persons in those premises; 25
 - “district heat network” means a heat network by means of which heating, cooling or hot water is supplied to two or more buildings or persons in those buildings;
 - “heat network” means a network that, by distributing a liquid or a gas, enables the transfer of thermal energy for the purpose of supplying heating, cooling or hot water to a building or persons in that building. 30
- (3) For the purposes of subsection (2), a network is not excluded from being a district heat network only by reason of its being designed to rely wholly or in part on heat pumps particular to the buildings served by the network. 35
- (4) The Secretary of State may by regulations amend this section for the purposes of changing the definitions of “relevant heat network”, “district heat network”, “communal heat network” and “heat network”.

- (5) Regulations under this section are subject to the negative procedure.

166 The Regulator

- (1) In this Chapter, “the Regulator” means –
- (a) in relation to England and Wales and Scotland, the GEMA, and
 - (b) in relation to Northern Ireland, the NIAUR. 5
- (2) The Secretary of State may by regulations provide for functions of the Regulator in relation to England and Wales and Scotland to be carried out, to the extent specified in the regulations, by a person or body other than the GEMA.
- (3) The Department may by regulations provide for functions of the Regulator in relation to Northern Ireland to be carried out, to the extent specified in the regulations, by a person or body other than the NIAUR. 10
- (4) The Secretary of State may by regulations make such amendments of this Part as appear to the Secretary of State to be appropriate in consequence of provision made by virtue of subsection (2) or (3). 15
- (5) The Department may by regulations make such amendments of this Part as appear to the Department to be appropriate in consequence of provision made by virtue of subsection (3).
- (6) Regulations made by the Secretary of State under this section are subject to the affirmative procedure. 20
- (7) The power of the Department to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (8) Regulations made by the Department under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly. 25

167 Alternative dispute resolution for consumer disputes

- (1) The Department may by regulations amend the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 (S.I. 2015/542) so as to provide for a person who, or a body which, from time to time carries out to any extent in relation to Northern Ireland the functions conferred on the Regulator by this Chapter to be a competent authority for the purposes of those regulations. 30
- (2) The power of the Department to make regulations under this section is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979. 35
- (3) Regulations made by the Department under this section may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.

168 Heat networks regulation

- (1) The appropriate authority may by regulations make provision for the purposes of—
 - (a) regulating relevant heat networks, or
 - (b) conferring powers in relation to the development or maintenance of relevant heat networks. 5
- (2) Schedule 15 contains further provision about the power to make regulations under this section.
- (3) Regulations under this section may—
 - (a) contain such consequential, incidental, supplementary, transitional or saving provisions as the appropriate authority considers appropriate; 10
 - (b) make different provision for different purposes;
 - (c) provide for a person to exercise discretion in dealing with any matter.
- (4) Regulations made by the Secretary of State by virtue of subsection (3)(a) may include provisions amending or repealing primary legislation. 15
- (5) Regulations made by the Department by virtue of subsection (3)(a) may include provisions amending or repealing Northern Ireland legislation.
- (6) Before making any regulations under this section, the appropriate authority is to consult such persons or bodies as it may consider appropriate.
- (7) Before making regulations by virtue of any of Parts 3, 4, 7, 8 and 11 of Schedule 15 containing provision within the devolved competence of the Scottish Ministers, the Secretary of State is to consult the Scottish Ministers. 20
- (8) For the purposes of this section, a provision is within the devolved competence of the Scottish Ministers if and to the extent that it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament. 25
- (9) It is immaterial for the purposes of subsection (6) or (7) whether consultation is carried out before or after the coming into force of this section.
- (10) In this section—
 - “the appropriate authority” means—
 - (a) in relation to England and Wales and Scotland, the Secretary of State;
 - (b) in relation to Northern Ireland, the Department;
 - “primary legislation” means—
 - (a) an Act of Parliament, 35
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation.

169 Heat networks regulation: procedure

- (1) Regulations made by the Secretary of State under section 168 are subject to the negative procedure, subject to subsection (2).
- (2) A statutory instrument containing any of the following regulations (whether alone or with other regulations) is subject to the affirmative procedure – 5
 - (a) the first regulations to be made by the Secretary of State under section 168;
 - (b) regulations under section 168 which are made by virtue of –
 - (i) paragraph 12(1) of Schedule 15,
 - (ii) paragraph 24(1) of Schedule 15, or 10
 - (iii) paragraph 33 of Schedule 15;
 - (c) regulations under section 168 which create an offence or provide for an increase in the penalty for an existing offence;
 - (d) regulations under section 168 which amend or repeal any provision of primary legislation (as defined in section 168). 15
- (3) The power of the Department to make regulations under section 168 is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979.
- (4) Statutory rules containing regulations made by the Department under section 168 are subject to negative resolution (within the meaning of section 41(4) of the Interpretation Act (Northern Ireland) 1954 (c. 33 (N.I.))), subject to subsection (5). 20
- (5) Regulations made by the Department under section 168 containing any of the following regulations (whether alone or with other regulations) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly – 25
 - (a) the first regulations to be made by the Department under section 168;
 - (b) regulations under section 168 which are made by virtue of –
 - (i) paragraph 12(1) of Schedule 15, or
 - (ii) paragraph 33 of Schedule 15; 30
 - (c) regulations under section 168 which amend or repeal any provision of Northern Ireland legislation.

170 Recovery of costs by GEMA and NIAUR

- (1) The conditions of a licence under section 7, 7ZA, 7A or 7AB of the Gas Act 1986 or section 6 of the Electricity Act 1989 may require payment by the licence holder of sums relating to expenses of the GEMA under regulations made by virtue of section 168. 35
- (2) The conditions of a licence under Article 8 of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) or Article 10 of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) may require payment by the licence 40

holder of sums relating to expenses of the NIAUR under regulations made by virtue of section 168.

171 Heat networks: licensing authority in Scotland

- (1) The Secretary of State may by regulations designate the GEMA as the licensing authority for the purposes of the Heat Networks (Scotland) Act 2021 (asp 9). 5
- (2) Regulations under subsection (1) are subject to the negative procedure.
- (3) In section 4 of the Heat Networks (Scotland) Act 2021 (meaning of “licensing authority”) –
 - (a) at the beginning insert “(1)”; 10
 - (b) after the subsection (1) so formed insert –
 - “(2) Subsection (1) is subject to subsection (3). 10
 - (3) If the Secretary of State designates the Gas and Electricity Markets Authority as the licensing authority for the purposes of this Act by regulations under section 171(1) of the Energy Act 2022, references in this Act to the licensing authority are references to the Gas and Electricity Markets Authority.” 15

172 Heat networks: enforcement in Scotland

- (1) The Secretary of State may by regulations amend the Heat Networks (Scotland) Act 2021 for the purpose of making provision about monitoring compliance with, or enforcement of, conditions of heat networks licences issued under section 5(5) of that Act. 20
- (2) Regulations under this section may, in particular, make provision corresponding to the provision described in paragraphs 6 to 10, 38 to 41, 44, 73 and 74 of Schedule 15.
- (3) Regulations under this section must provide for an offence created by the regulations – 25
 - (a) to be triable only summarily, and
 - (b) to be punishable on conviction with imprisonment for a period not exceeding 3 months or a fine not exceeding level 1 on the standard scale (or both). 30

173 Interpretation of Chapter 1

In this Chapter –

- “the Department” means the Department for the Economy in Northern Ireland;
- “heat network” has the meaning given by section 165; 35
- “the NIAUR” means the Northern Ireland Authority for Utility Regulation;
- “the Regulator” has the meaning given by section 166;

“relevant heat network” has the meaning given by section 165.

CHAPTER 2

HEAT NETWORK ZONES

Zones regulations

- | | |
|---|----|
| 174 Regulations about heat network zones | 5 |
| <p>(1) The Secretary of State may by regulations make provision about heat network zones (“zones regulations”).</p> | |
| <p>(2) A heat network zone is an area in England that is designated as such under zones regulations by virtue of being appropriate for the construction and operation of one or more district heat networks.</p> | |
| | 10 |
| <p>(3) The provision made by this Chapter is without prejudice to the generality of subsection (1).</p> | |
| <p>(4) Subject to subsection (5), zones regulations are subject to the affirmative procedure.</p> | |
| <p>(5) Zones regulations which make provision of the kind described in section 177(1)(c) or (4)(c) or 178(2)(c) or (6) (and no other provision) are subject to the negative procedure.</p> | |
| | 15 |
| <p>(6) If, apart from this section, a draft of an instrument containing zones regulations would be treated for the purposes of the standing orders of either House of Parliament as a hybrid instrument, it is to proceed in that House as if it were not such an instrument.</p> | |
| | 20 |

Heat Network Zones Authority and zone coordinators

- | | |
|--|----|
| 175 Heat Network Zones Authority | |
| <p>(1) Zones regulations may designate a person to act as the Heat Network Zones Authority (referred to in this Chapter as “the Authority”).</p> | |
| | 25 |
| <p>(2) The purpose of the Authority is to carry out functions in relation to heat network zones conferred on it by zones regulations.</p> | |
| <p>(3) The Secretary of State may, but need not, be designated for the purposes of subsection (1).</p> | |
| <p>(4) Zones regulations may provide for the Authority to delegate any of its functions to persons specified in the regulations.</p> | |
| | 30 |
| 176 Zone coordinators | |
| <p>(1) Zones regulations may make provision about zone coordinators.</p> | |

- (2) The purpose of zone coordinators is to carry out functions conferred on them by zones regulations in relation to particular heat network zones.
- (3) Regulations made by virtue of subsection (1) may –
- (a) make provision for, or in connection with, the designation of a person as a zone coordinator by a local authority for its area, or a part or parts of its area (including the local authority designating itself); 5
 - (b) make provision for, or in connection with, the designation of a person as a zone coordinator by two or more local authorities for their areas or parts of their areas (including the local authorities designating one of themselves); 10
 - (c) make provision for, or in connection with, the establishment of a body by one or more local authorities which is intended to be designated as a zone coordinator in accordance with regulations made by virtue of paragraph (a) or (b);
 - (d) make provision about the funding of zone coordinators; 15
 - (e) make provision about the governance of zone coordinators;
 - (f) make provision about zone coordinators cooperating with the Regulator in relation zone coordinators’ functions or the Regulator’s functions;
 - (g) make provision for the Authority to perform any function of a zone coordinator in circumstances, and subject to requirements, specified by the regulations; 20
 - (h) make provision for the Authority to direct a zone coordinator to perform any of its functions in the manner the Authority considers appropriate in circumstances, and subject to requirements, specified by the regulations. 25
- (4) Regulations made by virtue of subsection (3)(a) and (b) may make provision for the Authority to require a local authority, or two or more local authorities, to designate a person as a zone coordinator in circumstances, and subject to requirements, specified by the regulations.
- (5) In this section, “local authority” means – 30
- (a) a county, district or parish council in England;
 - (b) a London borough council;
 - (c) the Common Council of the City of London;
 - (d) the Council of the Isles of Scilly;
 - (e) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009; 35
 - (f) another body or person specified by zones regulations.

Identification, designation and review of zones

177 Identification, designation and review of zones

- (1) Zones regulations may make provision for, or in connection with – 40

-
- (a) the identification by the Authority and zone coordinators of areas which are appropriate for the construction and operation of one or more district heat networks,
 - (b) the designation of those areas as heat network zones by zone coordinators, and 5
 - (c) the review by zone coordinators, or the Authority, of the designation of areas as heat network zones.
- (2) Regulations made by virtue of subsection (1)(a) must require the identification of areas to be carried out in accordance with the zoning methodology established under section 178. 10
- (3) Regulations made by virtue of subsection (1)(b) may –
- (a) make provision about the variation or revocation of designations by zone coordinators;
 - (b) make provision about procedure;
 - (c) make provision about the publication of designations (and the variation or revocation of designations); 15
 - (d) require zone coordinators to notify the Authority of designations (and the variation or revocation of designations);
 - (e) make provision for, or in connection with, the maintenance by the Authority of a register of areas designated as heat network zones. 20
- (4) Regulations made by virtue of subsection (3)(a) may, in particular –
- (a) specify the circumstances in which a zone coordinator may vary or revoke a designation;
 - (b) specify the factors a zone coordinator may or must take into consideration in determining whether to vary or revoke a designation; 25
 - (c) impose on zone coordinators requirements as to consultation.
- (5) Regulations made by virtue of subsection (1)(c) may –
- (a) make provision about the circumstances in which reviews must be carried out and the frequency of reviews;
 - (b) set out the criteria against which the designation of areas as heat network zones is to be reviewed; 30
 - (c) impose on zone coordinators requirements as to consultation;
 - (d) make provision requiring reports of reviews to be published.

178 Zoning methodology

- (1) Zones regulations may make provision for a methodology (to be known as “the zoning methodology”) for the Authority and zone coordinators to identify areas which are appropriate for the construction and operation of one or more district heat networks. 35
- (2) Regulations made by virtue of subsection (1) may include in the zoning methodology – 40
- (a) the criteria for determining whether an area is appropriate;

- (b) the roles of the Authority and zone coordinators;
 - (c) requirements as to consultation;
 - (d) provision about how the identification of areas is to be recorded, including provision about the use of maps;
 - (e) requirements as to publication of areas which have been identified. 5
- (3) Zones regulations may make provision for, or in connection with, the Authority publishing documents elaborating on one or more aspects of the zoning methodology.
- (4) Regulations made by virtue of subsection (3) may –
 - (a) require the Authority and zone coordinators to comply with any requirements set out in a document when applying the zoning methodology; 10
 - (b) make provision for the Authority to amend or replace a document.
- (5) Zones regulations may make provision for the Authority to issue guidance in relation to the zoning methodology. 15
- (6) Zones regulations may make provision about the Secretary of State carrying out reviews of the zoning methodology.
- (7) Regulations made by virtue of subsection (6) may –
 - (a) make provision about the circumstances in which reviews must be carried out and the frequency of reviews; 20
 - (b) set out the criteria against which the zoning methodology is to be reviewed;
 - (c) impose on the Secretary of State requirements as to consultation;
 - (d) make provision for the Authority or zone coordinators to consult persons on behalf of the Secretary of State; 25
 - (e) make provision requiring reports of reviews to be published.

179 Requests for information in connection with section 177 or 178

- (1) Zones regulations may make provision about the Authority and zone coordinators requesting information in connection with their functions under regulations made by virtue of section 177 or 178. 30
- (2) Regulations made by virtue of subsection (1) may provide for –
 - (a) the Authority or a zone coordinator to request information by notice from a person of a description specified in the regulations;
 - (b) the requested information to be provided within the period, and in the form and manner, specified in the notice; 35
 - (c) the Authority or zone coordinator to impose a penalty on a person for not complying with the notice;
 - (d) the disclosing of information requested by the zone coordinator not to breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed); 40

- (e) a request for information not to require a disclosure of information if disclosure would contravene the data protection legislation (but for a requirement imposed by virtue of regulations made by virtue of subsection (1) to be taken into account in determining whether a disclosure would do so); 5
- (f) zone coordinators to delegate functions conferred on them by regulations made by virtue of subsection (1) to a description of person, and in the circumstances and subject to the conditions, specified by the regulations. 5

Heat networks within zones 10

180 Heat networks within zones

- (1) Zones regulations may make provision about heat networks within heat network zones.
- (2) Regulations made by virtue of subsection (1) may, in particular –
 - (a) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that buildings of types specified by the regulations situated within a heat network zone are connected to a district heat network within the zone – 15
 - (i) in circumstances specified by the regulations, and
 - (ii) within a time specified by, or determined in accordance with, the regulations; 20
 - (b) make provision about zone coordinators giving notice of requirements imposed by regulations made by virtue of paragraph (a) to persons on whom requirements are imposed;
 - (c) make provision about the grant by zone coordinators of exemptions from requirements imposed by regulations made by virtue of paragraph (a); 25
 - (d) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that buildings of types specified by the regulations situated within a heat network zone are installed with communal heat networks – 30
 - (i) in circumstances specified by the regulations,
 - (ii) within a time specified by, or determined in accordance with, the regulations, and
 - (iii) in a manner that would allow the communal heat networks to be connected to a district heat network; 35
 - (e) make provision for, or in connection with, the requesting of information from a person, by notice given by a zone coordinator, about a source of thermal energy located on the person’s premises that may be suitable to supply a district heat network within a heat network zone; 40
 - (f) make provision for, or in connection with, the imposition of a requirement on a person, by notice given by a zone coordinator, to allow the installation of equipment on the person’s premises, and the

- connection of that equipment to a district heat network, to enable a source of thermal energy located on the premises to supply a district heat network within a heat network zone;
- (g) make provision imposing requirements on persons of a description specified in the regulations for the purpose of securing that machinery and other equipment of types specified by the regulations are designed, and installed on premises, in a manner which would enable thermal energy generated by the machinery or other equipment to be supplied to a district heat network within a heat network zone; 5
 - (h) make provision for, or in connection with, the setting by zone coordinators of limits on emissions of targeted greenhouse gases resulting from district heat networks within heat network zones; 10
 - (i) make provision about zone coordinators affording a grace period to a person who is required to comply with a limit imposed under regulations made by virtue of paragraph (h). 15
- (3) Regulations made by virtue of subsection (2)(c) may –
- (a) specify the criteria in accordance with which a zone coordinator is to determine an application for an exemption;
 - (b) make provision about procedure;
 - (c) specify how, and on what grounds, a refusal to grant an exemption may be appealed. 20
- (4) Regulations made by virtue of subsection (2)(e) may –
- (a) specify the information about the source of thermal energy that may be requested;
 - (b) require the requested information to be provided within the period, and in the form and manner, specified in the notice; 25
 - (c) provide for the disclosing of information requested by the zone coordinator not to breach any obligation of confidence owed by the person making the disclosure or any other restriction on the disclosure of information (however imposed); 30
 - (d) provide for a request for information not to require a disclosure of information if disclosure would contravene the data protection legislation (but for a requirement imposed by virtue of subsection (2)(e) to be taken into account in determining whether a disclosure would do so); 35
 - (e) provide for zone coordinators to delegate functions conferred on them by regulations made by virtue of subsection (2)(e) to a description of person, and in circumstances and subject to conditions, specified by the regulations.
- (5) Regulations made by virtue of subsection (2)(f) may – 40
- (a) specify the types of sources of thermal energy in respect of which a zone coordinator may or must impose a requirement on a person and in what circumstances;
 - (b) make provision about the period within which a person must comply with a requirement; 45

- (c) specify how, and on what grounds, a requirement imposed on a person in respect of a source of thermal energy may be appealed.
- (6) Regulations made by virtue of subsection (2)(h) may –
 - (a) specify the manner and form in which the limits are to be set;
 - (b) require zone coordinators to obtain the consent of the Authority before setting a limit. 5
- (7) Regulations made by virtue of subsection (2)(i) may –
 - (a) specify the circumstances in which a zone coordinator may or must afford a person a grace period;
 - (b) make provision for the Authority to issue guidance about grace periods; 10
 - (c) make provision about procedure;
 - (d) specify how, and on what grounds, a refusal to grant a grace period may be appealed.
- (8) In subsection (2)(d), “communal heat network” has the meaning given by section 165(2). 15
- (9) In subsection (2)(h), “emissions” and “targeted greenhouse gas” have the same meaning as in the Climate Change Act 2008 (see sections 24 and 97 of that Act).
- (10) In subsections (2)(i) and (7), “grace period” means a period to comply before enforcement action is taken. 20

181 Delivery of district heat networks within zones

- (1) Zones regulations may make provision about the delivery of district heat networks within heat network zones.
- (2) Regulations made by virtue of subsection (1) may, in particular – 25
 - (a) make provision about zone coordinators deciding –
 - (i) what district heat networks may be constructed and operated within a heat network zone;
 - (ii) who will design, construct, operate and maintain district heat networks within heat network zones; 30
 - (b) make provision about zone coordinators designing, constructing, operating or maintaining district heat networks within heat network zones, or arranging for their design, construction, operation or maintenance;
 - (c) make provision about the giving of advice by the Authority to zone coordinators about the delivery of district heat networks within heat network zones. 35
- (3) Regulations made by virtue of subsection (2)(a)(ii) may –

- (a) make provision for the construction, operation or maintenance of district heat networks within heat network zones to be subject to the consent of zone coordinators;
 - (b) make provision for the grant by zone coordinators of an exclusive right to design, construct, operate or maintain district heat networks within heat network zones or parts of heat network zones. 5
- (4) Regulations made by virtue of subsection (3)(b) may –
 - (a) make provision for the Authority to publish the standard conditions that zone coordinators must use when granting an exclusive right (and for the Authority to amend or replace the standard conditions); 10
 - (b) specify the circumstances in which zone coordinators may grant an exclusive right.
- (5) Regulations made by virtue of subsection (2)(a) may –
 - (a) specify the manner and form of zone coordinators’ decisions under regulations made by virtue of subsection (2)(a); 15
 - (b) make provision for a zone coordinator to vary or revoke a decision;
 - (c) specify considerations a zone coordinator may or must take into account when making, varying or revoking a decision;
 - (d) make provision about procedure;
 - (e) make provision about the publication of a decision (or the variation or revocation of a decision); 20
 - (f) specify how, and on what grounds, a decision, or a variation or revocation of a decision, may be appealed;
 - (g) make provision for a zone coordinator to lose the power to decide the matters specified in subsection (2)(a)(i) and (ii), and instead for those matters to no longer be subject to the zone coordinator’s control, if the zone coordinator does not take steps specified by the regulations within a time specified by the regulations. 25

Enforcement

- 182 Enforcement of heat network zone requirements** 30
- (1) Zones regulations may make provision about the enforcement of heat network zone requirements.
 - (2) Regulations made by virtue of subsection (1) may, in particular, provide for a zone coordinator –
 - (a) to issue a notice requiring a person to demonstrate compliance with a heat network zone requirement where the zone coordinator suspects that the person is not complying with the requirement; 35
 - (b) to issue a notice specifying steps a person is required to take in order to comply with a heat network zone requirement where the zone coordinator is satisfied that the person is not complying with the requirement; 40

- (c) to impose a penalty on a person for the contravention of—
 - (i) a heat network zone requirement, or
 - (ii) a requirement imposed by a notice under regulations made by virtue of paragraph (a) or (b).
- (3) Regulations made by virtue of subsection (2)(a) or (b) may— 5
 - (a) make provision about the period within which a person must comply with a notice;
 - (b) make provision about procedure;
 - (c) specify how, and on what grounds, a notice may be appealed.
- (4) In this section, “heat network zone requirement” means a requirement imposed by or by virtue of regulations made by virtue of section 180 or 181. 10

183 Penalties

- (1) Zones regulations made by virtue of section 179(2)(c) or 182(2)(c) may— 15
 - (a) make provision about the maximum amount that may be imposed by way of penalty;
 - (b) make provision about procedure;
 - (c) specify how, and on what grounds, the imposition or amount of penalty may be appealed;
 - (d) specify how a penalty may be recovered;
 - (e) require sums received by way of penalty to be paid into the Consolidated Fund or to persons specified by the regulations. 20
- (2) Zones regulations may provide for the publication of guidance by the Authority with respect to— 25
 - (a) the imposition of penalties under regulations made by virtue of section 179(2)(c) or 182(2)(c), and
 - (b) the determination of their amount.

Records, information and reporting

184 Records, information and reporting

- (1) Zones regulations may make provision requiring zone coordinators to collect information specified by the regulations which— 30
 - (a) is relevant to identifying areas which are appropriate for the construction and operation of one or more district heat networks, or
 - (b) relates to areas designated as heat network zones.
- (2) Zones regulations may make provision requiring zone coordinators to maintain records of— 35
 - (a) information provided to zone coordinators in response to requests for information made by zone coordinators under regulations made by virtue of section 179 or 180(2)(e);

- (b) information zone coordinators are required to collect by regulations made by virtue of subsection (1) of this section;
 - (c) other information provided to, collected by, or otherwise brought into the possession of zone coordinators by virtue of their functions under zones regulations. 5
- (3) Zones regulations may make provision enabling or requiring zone coordinators to provide information specified by the regulations from their records to—
 - (a) to other zone coordinators;
 - (b) the Authority; 10
 - (c) the Regulator.
- (4) Zone regulations may require the Authority to maintain records of—
 - (a) information provided to the Authority in response to requests for information made by the Authority under regulations made by virtue of section 179;
 - (b) information provided by zone coordinators to the Authority in accordance with regulations made by virtue of subsection (3) of this section; 15
 - (c) other information provided to, collected by, or otherwise brought into the possession of the Authority by virtue of its functions under zones regulations. 20
- (5) Zones regulations may make provision enabling or requiring the Authority to provide information specified by the regulations from its records to—
 - (a) zone coordinators;
 - (b) the Regulator.
- (6) Zones regulations may make provision— 25
 - (a) for the disclosure of information by a zone coordinator or the Authority in accordance with regulations made by virtue of subsection (3) or (5) not to breach any obligation of confidence owed by the zone coordinator or the Authority or any other restriction on the disclosure of information (however imposed); 30
 - (b) for regulations made by virtue of subsection (3) or (5) not to authorise or require disclosure of information if disclosure would contravene the data protection legislation (but for a power conferred, or requirement imposed, by regulations made by virtue of subsection (3) or (5) to be taken into account in determining whether a disclosure would do so). 35

Interpretation

185 Interpretation

In this Chapter—

- “the Authority” means the person designated as the Heat Network Zones Authority by regulations made by virtue of section 175(1); 40

- “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);
- “district heat network” has the meaning given by section 165(2);
- “heat network” has the meaning given by section 165(2);
- “heat network zone” has the meaning given by section 174(2); 5
- “the Regulator” has the meaning given by section 166(1)(a);
- “zone coordinator” means a person designated as such under regulations made by virtue of section 176(3)(a);
- “zones regulations” means regulations under section 174;
- “the zoning methodology” has the meaning given by section 178(1). 10

PART 8

ENERGY SMART APPLIANCES AND LOAD CONTROL

CHAPTER 1

INTRODUCTORY

- 186 Energy smart appliances and load control** 15
- (1) The following definitions apply for the purposes of this Part.
- (2) “Energy smart appliance” means an appliance which is capable of adjusting the immediate or future use, discharge or storage of electrical energy by it or another appliance in response to a load control signal; and includes any software or other systems which enable or facilitate the adjustment to be made in response to the signal. 20
- (3) The functionality described in subsection (2) is referred to as the “energy smart function”.
- (4) “Load control signal” means a digital communication sent for the purpose of causing or otherwise facilitating such an adjustment and received (by an energy smart appliance) via a relevant electronic communications network. 25
- (5) The sending of a load control signal to an energy smart appliance is referred to as “load control”.
- (6) Regulations under section 187, excluding regulations under section 187(6), are referred to as “energy smart regulations”. 30

CHAPTER 2

ENERGY SMART APPLIANCES

- 187 Energy smart regulations**
- (1) The Secretary of State may by regulations make provision about energy smart appliances that are – 35

- (a) capable of being used in connection with any of the purposes specified in subsection (2), or
 - (b) charge points (for electric vehicles).
- (2) The specified purposes are –
 - (a) refrigeration; 5
 - (b) cleaning;
 - (c) battery storage;
 - (d) electrical heating (of any kind);
 - (e) air conditioning or ventilation.
- (3) In making such regulations, the Secretary of State must, in particular, have regard to the desirability of ensuring that – 10
 - (a) the energy smart function or compatibility with that function is incorporated into appliances in a manner that is compliant with the regulations,
 - (b) the energy smart function does not undermine the delivery of a consistent and stable supply of electricity, 15
 - (c) the energy smart function in any energy smart appliance is capable of operating in response to load control signals from any person carrying out load control, and
 - (d) communications, software, systems and personal and other data used in connection with energy smart appliances are secure or otherwise protected, for purposes including the protection of end-users. 20
- (4) Such regulations may, in particular –
 - (a) make provision about all energy smart appliances or any description of energy smart appliances, 25
 - (b) impose technical or other requirements in relation to such appliances, including requirements to display or otherwise provide information about appliances,
 - (c) prohibit the placing on the market of, or other activities in connection with, relevant appliances (see section 188(3)), 30
 - (d) provide for the enforcement of the regulations.
- (5) Such regulations may impose prohibitions or requirements on any person, including any person making, selling, importing or distributing energy smart appliances or carrying out load control (but see section 188(5)).
- (6) The Secretary of State may by regulations – 35
 - (a) make provision about the meaning that “relevant electronic communications network” is to have for the purposes of this Part;
 - (b) amend the list of purposes in subsection (2).
- (7) In this Chapter, “charge point” has the same meaning as in Part 2 of the Automated and Electric Vehicles Act 2018 (see section 9 of that Act). 40

188 Prohibitions and requirements: supplemental

- (1) Requirements imposed by energy smart regulations may, in particular, refer or relate to—
 - (a) published documents and standards (as they have effect from time to time); 5
 - (b) a list, published by the Secretary of State, of such documents and standards;
 - (c) requirements (however described) imposed by or under any enactment or Act of the Scottish Parliament.

- (2) Prohibitions imposed by energy smart regulations may, in particular, relate to— 10
 - (a) the providing of load control for appliances that are not compliant with the regulations;
 - (b) the modification of appliances in a manner that would cause them to cease to be compliant with the regulations. 15

- (3) The following kinds of appliances are “relevant appliances” for the purposes of section 187(4)(c)—
 - (a) energy smart appliances that are not compliant with requirements or particular requirements of energy smart regulations;
 - (b) appliances without the energy smart function, or that are not compatible with the energy smart function of another appliance, and are— 20
 - (i) charge points (for electric vehicles), or
 - (ii) electrical heating appliances.

- (4) In this Chapter, “modification of appliances” has the meaning given by energy smart regulations. 25

- (5) Energy smart regulations may not provide for a prohibition to be contravened by an end-user of an appliance (in their capacity as such) or for such a person to be enforced against as described in section 189 or 190.

189 Enforcement 30

- (1) Provision for the enforcement of energy smart regulations may, in particular, include provision of a kind described in this section, section 190 or section 191.

- (2) Energy smart regulations may include provision to ensure compliance with any prohibition or requirement imposed by or under the regulations, including provision— 35
 - (a) designating authorities to carry out enforcement (referred to in this Chapter as “enforcement authorities”);
 - (b) requiring persons to— 40
 - (i) maintain information;
 - (ii) monitor compliance and report non-compliance;

- (c) conferring powers of entry, including by reasonable force;
 - (d) conferring powers of inspection, search and seizure;
 - (e) conferring powers to require the production of information or things held at, or electronically accessible from, entered premises;
 - (f) conferring functions, including functions involving the exercise of a discretion. 5
- (3) Regulations conferring powers described in subsection (2)(c), (d) or (e) must provide that persons exercising those powers are to produce evidence of their authority if required to do so.
- (4) The regulations may not allow entry to premises by reasonable force without a warrant issued by a justice of the peace or, in Scotland, a sheriff or summary sheriff. 10
- (5) Energy smart regulations may allow enforcement authorities to impose requirements by written notice on persons to – 15
- (a) produce information or things;
 - (b) make appliances compliant with energy smart regulations;
 - (c) stop or limit –
 - (i) the placing on the market of, or other activities in connection with, appliances,
 - (ii) the providing of load control to appliances, or 20
 - (iii) the modification of appliances,for the purpose of preventing or mitigating non-compliance with energy smart regulations.
- (6) Regulations that allow an enforcement authority to impose requirements may also provide for – 25
- (a) the authority to apply to a court or tribunal in connection with a failure to comply with a requirement, and
 - (b) for the court or tribunal, if satisfied that such a failure has occurred, to make an order for the purpose of securing compliance with the requirement. 30
- (7) Such an order may require a person to take, or refrain from taking, steps specified in the order (including at, by or until specified times).
- (8) The Secretary of State may make payments or provide other resources to, or in respect of, enforcement authorities in connection with the exercise of functions under energy smart regulations. 35

190 Sanctions, offences and recovery of costs

- (1) Energy smart regulations may provide for sanctions to be imposed on persons in relation to –
- (a) non-compliance with a prohibition or requirement imposed by or under such regulations; 40

-
- (b) providing false or misleading information in relation to any such prohibition or requirement.
- (2) The regulations may, in particular, provide for the imposition of civil penalties, including graduated or multiple penalties in connection with a continuous or serious act or omission. 5
- (3) Energy smart regulations may create offences relating to—
- (a) contraventions (by act or omission) of requirements imposed by enforcement authorities;
 - (b) knowingly giving false or misleading information to enforcement authorities; 10
 - (c) the obstruction (by act or omission) of persons acting on behalf of enforcement authorities;
 - (d) the impersonation of persons acting on behalf of enforcement authorities.
- (4) Regulations which create an offence must provide for the offence to be triable only summarily. 15
- (5) Regulations may not provide for an offence to be punishable with imprisonment.
- (6) Regulations may provide for enforcement authorities to recover costs.
- 191 Appeals against enforcement action** 20
- (1) Energy smart regulations that provide for the imposition of a requirement or civil penalty by an enforcement authority must include provision for a right of appeal to a court or tribunal against that requirement or penalty.
- (2) Provision falling within subsection (1) includes, in particular, provision—
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made; 25
 - (b) as to the grounds on which an appeal may be made;
 - (c) as to the procedure for making an appeal (including any fee which may be payable);
 - (d) suspending the imposition of the requirement or penalty, pending determination of the appeal; 30
 - (e) as to the powers of the court or tribunal to which an appeal is made;
 - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (3) In relation to the imposition of a requirement, the regulations may provide for persons other than the person against whom the requirement was imposed to also have a right of appeal. 35
- (4) The provision referred to in subsection (2)(e) includes provision conferring on the court or tribunal to which an appeal is made power—
- (a) to confirm or withdraw the requirement or penalty; 40

- (b) to vary or remove a part of the requirement;
 - (c) to vary the amount of the penalty;
 - (d) to award costs or, in Scotland, expenses.
- (5) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within subsection (2)(a), (c), (e) or (f), the regulations may revoke or amend any subordinate legislation. 5
- (6) In this section “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under—
- (a) an Act of the Scottish Parliament;
 - (b) a Measure or Act of the Senedd Cymru. 10

192 Regulations: procedure and supplemental

- (1) Regulations under section 187 may provide for exemptions or exceptions.
- (2) The Secretary of State must consult such persons as the Secretary of State thinks fit before making regulations under section 187 that—
- (a) make a description of appliance subject to energy smart regulations; 15
 - (b) amend the list of purposes in section 187(2).
- (3) Subsection (2) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (4) The first energy smart regulations, and any regulations under section 187 that (with or without other provision) amend the list of purposes in section 187(2) or create a criminal offence (see section 190), are subject to the affirmative procedure. 20
- (5) Any other regulations under section 187 are subject to the negative procedure.

CHAPTER 3

LICENSING OF LOAD CONTROL 25

193 Power to amend licence conditions etc: load control

- (1) The Secretary of State may modify—
- (a) the conditions of a licence granted under section 6(1) of the Electricity Act 1989;
 - (b) the standard conditions incorporated in such licences by virtue of section 8A of that Act; 30
 - (c) the conditions of a licence granted under section 7A(1) or 7AB of the Gas Act 1986;
 - (d) the standard conditions incorporated in such licences by virtue of section 8 of that Act; 35
 - (e) a document maintained in accordance with the conditions of a licence granted under section 6(1) of the Electricity Act 1989 or section 7A(1)

- or 7AB of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purposes of facilitating, promoting, ensuring the security of, or otherwise regulating load control or other activities falling within section 56FBA(2) of the Electricity Act 1989. 5
- (3) Modifications made to the conditions of a licence may include provisions of a kind mentioned in section 7 of the Electricity Act 1989 or section 7B of the Gas Act 1986 (as appropriate) and may in particular –
- (a) regulate or prohibit the provision of load control in relation to appliances that are not compliant with energy smart regulations or any technical standards specified in or under a condition; 10
 - (b) regulate the provision of load control in relation to appliances that are compliant with energy smart regulations or any technical standards specified in or under a condition; 15
 - (c) require the holder of a licence to supply information to the Secretary of State or the GEMA (or both) so as to enable them to assess any matter relating to the purposes mentioned in subsection (2);
 - (d) require the holder of the licence to enter (or refrain from entering) into an agreement of a specified kind, or with a specified person; 20
 - (e) require the holder of a licence to supply information about tariffs (including to such persons, and in such a format, specified in or under a condition).
- (4) The power conferred by subsection (1) –
- (a) may be exercised to make different provision in relation to different areas or different classes of customer; 25
 - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
 - (c) may be exercised differently in different cases or circumstances; 30
 - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (5) The power conferred by subsection (1) may not be exercised after the period of 10 years beginning with the day on which this section comes into force.
- (6) The Secretary of State may, by regulations, extend (or further extend) that period. 35
- (7) Regulations under subsection (6) –
- (a) may not extend the period (or any extended period) by more than three years at a time, and
 - (b) are subject to the affirmative procedure. 40
- (8) In this section “modify” includes remove or fail to incorporate and “modification” is to be construed accordingly.

194 Power to amend licence conditions etc: procedure

- (1) Before making a modification, the Secretary of State must consult—
 - (a) the holder of any licence being modified,
 - (b) the GEMA, and
 - (c) such other persons as the Secretary of State considers appropriate. 5
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must specify the date upon which any modification is to have effect.
- (4) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made. 10
- (5) In this section “modification” means a modification under section 193.

195 Load control: supplemental

- (1) A modification under section 193 of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989. 15
- (2) Where the Secretary of State makes modifications under section 193(1)(b) or (e) of the standard conditions of a licence of any type, the GEMA must—
 - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and 20
 - (b) publish the modification.

196 Application of general duties to functions relating to load control

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (2), of functions conferred on the Secretary of State or the GEMA by or under sections 193 to 195. 25
- (2) The matters are—
 - (a) activities required to be authorised by gas licences, 30
 - (b) such licences and the conditions of such licences,
 - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
 - (d) companies holding such licences. 35
- (3) In section 4AA(2)(b) of the Gas Act 1986 (duty to have regard to ability of licence holders to finance obligations) for “or sections 26 to 29 of the Energy

- Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010, or sections 193 to 195 of the Energy Act 2022”.
- (4) Sections 3A to 3D of the Electricity Act 1989 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in subsection (5), of functions conferred on the Secretary of State or the GEMA by or under sections 193 to 195. 5
- (5) The matters are –
- (a) activities required to be authorised by electricity licences,
 - (b) such licences and the conditions of such licences,
 - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and 10
 - (d) companies holding such licences.
- (6) In section 3A(2)(b) of the Electricity Act 1989 (duty to have regard to ability of licence holders to finance obligations) for “or the Nuclear Energy (Financing) Act 2022” substitute “, the Nuclear Energy (Financing) Act 2022 or sections 193 to 195 of the Energy Act 2022”. 15
- (7) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences) –
- (a) omit the “or” at the end of paragraph (i), and 20
 - (b) after paragraph (j) insert “or,
 - (k) under sections 193 to 195 of the Energy Act 2022.”
- (8) In section 81(2) of the Utilities Act 2000 (standard conditions of gas licences) for “or under section 6 of the Smart Meters Act 2018” substitute “, under section 6 of the Smart Meters Act 2018 or sections 193 to 195 of the Energy Act 2022”. 25
- (9) In this section –
- “electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities);
 - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities). 30

197 Licensing of activities relating to load control

Schedule 16, which amends the Electricity Act 1989, provides for the licensing of load control.

PART 9

ENERGY PERFORMANCE OF PREMISES

198 Power to make energy performance regulations

- (1) The Secretary of State may make regulations for any of these purposes –
 - (a) enabling or requiring the energy usage or energy efficiency of premises to be assessed, certified and publicised; 5
 - (b) enabling or requiring possible improvements in the energy usage or energy efficiency of premises to be identified and recommended;
 - (c) restricting or prohibiting the marketing and disposal of premises on the basis of whether their energy usage or energy efficiency has been assessed, certified or publicised. 10
- (2) In this Part regulations under this section are referred to as “energy performance regulations”.
- (3) Energy performance regulations may –
 - (a) provide for – 15
 - (i) the regulations to apply to specified descriptions of premises, or
 - (ii) specified descriptions of premises to be excluded from the application of the regulations;
 - (b) confer functions on any person; 20
 - (c) provide for functions to be exercisable only if specified conditions are met (including conditions as to the eligibility of persons to exercise the functions);
 - (d) provide for the energy usage or energy efficiency of premises to be assessed or certified by reference to information that is obtained, produced or kept otherwise than under energy performance regulations; 25
 - (e) impose requirements on any person;
 - (f) make provision for the purpose of securing compliance with requirements imposed by or under energy performance regulations (see section 200); 30
 - (g) authorise or require, or restrict or prohibit, the supply or keeping of information (including authorising or requiring supply or keeping of information that would otherwise be prohibited);
 - (h) provide for the charging of fees. 35
- (4) A reference in this Part to publicising the energy usage and energy efficiency of premises includes –
 - (a) displaying energy performance information in the premises to which it relates;
 - (b) arranging for energy performance information to be entered into a record of such information (including a record that is publicly accessible); 40

- (c) reporting energy performance information;
- (d) supplying energy performance information.

(5) In this Part –

“certified” means certified in accordance with energy performance regulations; 5

“disposal of premises” includes leasing or letting of premises;

“energy performance information” means information about the energy usage or energy efficiency of premises;

“premises” means –

(a) a building or a part of a building (including any equipment, systems or facilities used by the building or the part), or 10

(b) any equipment, systems or facilities used by a building or a part of a building;

“specified” means specified in energy performance regulations.

199 Energy performance regulations relating to new premises 15

(1) The power to make energy performance regulations is exercisable in relation to new premises.

(2) Accordingly, in section 198 (except in the definition of “premises” in section 198(5)) –

(a) a reference to premises includes new premises; 20

(b) a reference to the energy usage and energy efficiency of premises includes the anticipated energy usage and energy efficiency of new premises.

(3) In this section “new premises” means premises –

(a) which are being constructed or adapted, or 25

(b) which it is proposed to construct or adapt.

200 Sanctions

(1) The enforcement provision that may be made includes provision –

(a) for a person with public functions to enforce a requirement imposed by or under energy performance regulations; 30

(b) about the sanctions for non-compliance with a requirement imposed by or under energy performance regulations;

(c) about the sanctions for the provision of false information in connection with such a requirement;

(d) about the sanctions for obstruction of, or impersonation of, an enforcement authority or a person acting for an enforcement authority. 35

(2) Energy performance regulations may provide for the imposition of civil penalties by enforcement authorities in relation to cases falling within subsection (1)(b), (c) or (d); but the regulations may not provide for a civil penalty that exceeds £15,000. 40

- (3) Energy performance regulations may provide for the creation of criminal offences in relation to cases falling within subsection (1)(b), (c) or (d); but the regulations may not provide for a criminal offence to be punishable –
- (a) with imprisonment for a term exceeding 12 months, or
 - (b) with a fine of more than level 5 on the standard scale. 5
- (4) Where energy performance regulations make provision for a civil penalty, the regulations must also include provision for a right of appeal to a court or tribunal against the imposition of the penalty.
- (5) Provision falling within subsection (4) includes, in particular, provision –
- (a) as to the jurisdiction of the court or tribunal to which an appeal may be made; 10
 - (b) as to the grounds on which an appeal may be made;
 - (c) as to the procedure for making an appeal (including any fee which may be payable);
 - (d) suspending the imposition of the penalty, pending determination of the appeal; 15
 - (e) as to the powers of the court or tribunal to which an appeal is made;
 - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (6) The provision referred to in subsection (5)(e) includes provision conferring on the court or tribunal to which an appeal is made power –
- (a) to confirm the penalty;
 - (b) to withdraw the penalty;
 - (c) to vary the amount of the penalty;
 - (d) to award costs. 20 25
- (7) The Secretary of State may, by regulations, amend the amount specified in subsection (2) for the purpose of reflecting inflation.
- (8) In this section –
- “enforcement authority” means a person on whom energy performance regulations confer the function of enforcing any requirement imposed by or under energy performance regulations; 30
 - “enforcement provision” means provision falling within section 198(3)(f).

201 Regulations under this Part

- (1) Regulations under this Part may amend, repeal or revoke provision made by or under –
- (a) an Act of Parliament, or
 - (b) an Act or Measure of Senedd Cymru. 35
- (2) Regulations under this Part containing any of the following (with or without other provision) are subject to the affirmative procedure –

- (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty);
 - (b) provision specifying a civil penalty amount;
 - (c) provision amending or repealing provision made by an Act of Parliament. 5
- (3) Regulations under this Part—
- (a) may make provision about application to the Crown; and
 - (b) may also, to the extent that they bind the Crown, restrict or modify the application of the regulations. 10

PART 10

CORE FUEL SECTOR RESILIENCE

CHAPTER 1

INTRODUCTION

202 **General objective** 15

The functions of the Secretary of State under this Part must be exercised with a view to—

- (a) ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities, and
- (b) reducing the risk of emergencies affecting fuel supplies. 20

203 **“Core fuel sector activity” and other key concepts**

- (1) In this Part “core fuel sector activity” means an activity of a kind mentioned in subsection (2), so far as the activity—
- (a) is carried on in the United Kingdom in the course of a business, and
 - (b) contributes (directly or indirectly) to the supply of core fuels to consumers in the United Kingdom or persons carrying on business in the United Kingdom. 25
- (2) The kinds of activity are—
- (a) storing oil or renewable transport fuel;
 - (b) handling oil or renewable transport fuel; 30
 - (c) the carriage of oil or renewable transport fuel by sea or inland water;
 - (d) transporting oil or renewable transport fuel by road or rail;
 - (e) conveying oil or renewable transport fuel by pipes;
 - (f) processing or producing oil or renewable transport fuel (whether by refining, blending or otherwise). 35
- (3) In subsection (2) the references to “oil” do not include crude oil which has not yet entered any refinery or terminal in the United Kingdom.

- (4) In this Part “core fuels” means—
 - (a) crude oil based fuels, and
 - (b) renewable transport fuels.

- (5) In this Part “core fuel sector resilience” means the capability of core fuel sector participants to— 5
 - (a) manage the risk of,
 - (b) reduce the potential adverse impact of, and
 - (c) facilitate recovery from,disruptions to core fuel sector activities.

- (6) In this Part “core fuel sector participant” means— 10
 - (a) a person carrying on core fuel sector activities;
 - (b) a Part 10 facility owner.

- (7) For the purposes of this Part there is “continuity of supply of core fuels” where the supply of core fuels to consumers in all areas of the United Kingdom, and persons carrying on business in all areas of the United Kingdom— 15
 - (a) is reliable and continuous, and
 - (b) is maintained at normal levels.

- (8) In subsection (7) “normal levels” means levels that—
 - (a) are not substantially below average monthly levels of supply in the United Kingdom (taking account of regional variations), and 20
 - (b) are consistent with a reasonable balance between supply and demand.

- (9) For the purposes of subsection (8) “average monthly levels” are to be calculated by reference to levels of supply in the five years preceding the calculation.

- (10) In this Part “relevant activities or assets”— 25
 - (a) in relation to a person carrying on core fuel sector activities, means the person’s core fuel sector activities (and includes any land or assets under the person’s control that are associated with those activities);
 - (b) in relation to a Part 10 facility owner, means the owned facility.

- (11) In this Part— 30
 - (a) “Part 10 facility owner” means the owner of a pipeline, terminal, or other facility or infrastructure which is used, or any part of which is used, for the purposes of core fuel sector activities;
 - (b) in relation to a Part 10 facility owner, “the owned facility” means the facility or infrastructure mentioned in paragraph (a). 35

- (12) In subsection (11) “owner”, in relation to any facility or infrastructure, means—
 - (a) a person in whom the facility or infrastructure is vested, or
 - (b) a lessee of the facility or infrastructure.

- (13) In this Part references to a “person carrying on core fuel sector activities” include any person carrying on such activities (whether or not as the owner of the oil or renewable transport fuel).

CHAPTER 2

POWERS FOR RESILIENCE PURPOSES

5

Directions

204 Directions to particular core fuel sector participants

- (1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, direct a person to whom this section applies to do anything in relation to the person’s relevant activities or assets (for example, to acquire and install specific equipment, or carry out specific works, at the person’s own expense). 10
- (2) The Secretary of State may not give a direction under subsection (1) unless the Secretary of State considers that the persons to whom this section applies have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience. 15
- (3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person’s relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of – 20
- (a) restoring continuity of supply of core fuels, or
- (b) counteracting the disruption or failure, or its potential adverse impact.
- (4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may direct a person to whom this section applies to do anything in relation to the person’s relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of – 25
- (a) reducing the risk, or
- (b) reducing the potential adverse impact of the disruption or failure. 30
- (5) The Secretary of State may not make a direction under subsection (1), (3) or (4) unless the Secretary of State considers – 35
- (a) that, the corresponding cases (if any) are not sufficiently numerous to justify making regulations under section 207, or
- (b) that, by reason of urgency, it is not practicable to achieve the aims of the direction by regulations under section 207.
- (6) In subsection (5)(a) the reference to “corresponding cases” is to persons to whom this section applies in relation to whom the Secretary of State considers it would be appropriate to take action corresponding to the direction.

- (7) This section applies to the following persons—
- (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
 - (b) a Part 10 facility owner if the owned facility has capacity in excess of 20,000 tonnes. 5
- (8) For the purposes of this Part—
- (a) a business “has capacity in excess of” a specified number of tonnes if in the most recently ended calendar year core fuel sector activities were carried on in that business in relation to more than that number of tonnes of core fuel; 10
 - (b) a facility or infrastructure “has capacity in excess of” a specified number of tonnes if in the most recently ended calendar year it was used for the purposes of core fuel sector activities in relation to more than that number of tonnes of core fuels.
- 205 Procedure for giving directions 15**
- (1) Before giving a person a direction under section 204 the Secretary of State must give the person a written notice accompanied by a draft of the proposed direction.
- (2) The notice under subsection (1) must—
- (a) state that the Secretary of State proposes to give the person a direction in the form of the accompanying draft; 20
 - (b) explain why the Secretary of State proposes to give the direction;
 - (c) state when it is intended that the direction will come into effect;
 - (d) specify a period within which the person may make written representations with respect to the proposal. 25
- (3) The period specified under subsection (2)(d) must begin with the date on which the notice is given to the person and must be not less than 14 days.
- (4) Before giving a direction under section 204, the Secretary of State must consult—
- (a) so far as the direction relates to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive; 30
 - (b) so far as the direction relates to relevant activities or assets in England, the Environment Agency;
 - (c) so far as the direction relates to relevant activities or assets in Scotland, the Scottish Environment Protection Agency; 35
 - (d) so far as the direction relates to relevant activities or assets in Wales, the Natural Resources Body for Wales;
 - (e) so far as the direction relates to relevant activities or assets in Northern Ireland—
 - (i) the Health and Safety Executive for Northern Ireland, and 40
 - (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;

- (f) any other persons the Secretary of State thinks appropriate.
- (5) The Secretary of State must decide whether to give the person the proposed direction (with or without modifications), after considering any representations made by –
- (a) the person mentioned in subsection (1), and 5
 - (b) any person consulted in accordance with subsection (4).
- (6) The Secretary of State must give written notice of that decision to the person mentioned in subsection (1).
- (7) If the decision is to give the proposed direction, the notice must –
- (a) contain the direction, and 10
 - (b) state the time when the direction is to take effect.
- (8) Consultation under subsection (4) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales must be with reference to that body’s functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483). 15
- (9) Consultation under subsection (4) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department’s functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325).
- 206 Offence of failure to comply with a direction** 20
- Any person who, without reasonable excuse, fails to comply with a direction given to the person under section 204 commits an offence and is liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 25
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 30
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Corresponding powers to make regulations

- 207 Corresponding powers to make regulations** 35
- (1) The Secretary of State may, for the purpose of maintaining or improving core fuel sector resilience, by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets.

- (2) The Secretary of State may not make any provision by regulations under subsection (1) unless the Secretary of State considers that the persons mentioned in paragraphs (a) and (b) of subsection (5) have failed to make sufficient progress with the steps that the Secretary of State considers necessary for maintaining or improving core fuel sector resilience. 5
- (3) Where there is disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of— 10
- (a) restoring continuity of supply of core fuels, or
 - (b) counteracting the disruption or failure, or its potential adverse impact.
- (4) If the Secretary of State considers that there is a significant risk of disruption to, or a failure of, continuity of supply of core fuels, the Secretary of State may by regulations require persons of a class or description specified in the regulations to do anything in relation to their relevant activities or assets which the Secretary of State considers necessary or expedient for the purpose of— 15
- (a) reducing the risk, or
 - (b) reducing the potential adverse impact of the disruption or failure. 20
- (5) A class or description specified for the purposes of subsection (1), (3) or (4) may not include persons other than—
- (a) persons carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes, or
 - (b) Part 10 facility owners whose owned facility has capacity in excess of 1,000 tonnes. 25
- (6) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence.
- (7) Before making regulations under this section the Secretary of State must consult— 30
- (a) so far as the regulations relate to relevant activities or assets in England, Scotland or Wales, the Health and Safety Executive;
 - (b) so far as the regulations relate to relevant activities or assets in England, the Environment Agency; 35
 - (c) so far as the regulations relate to relevant assets or activities in Scotland, the Scottish Environment Protection Agency;
 - (d) so far as the regulations relate to relevant activities or assets in Wales, the Natural Resources Body for Wales;
 - (e) so far as the regulations relate to relevant activities or assets in Northern Ireland— 40
- (i) the Health and Safety Executive for Northern Ireland, and

- (ii) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland;
- (f) any other persons the Secretary of State thinks appropriate.
- (8) Regulations under this section are subject to the affirmative procedure.
- (9) Consultation under subsection (7) with the Environment Agency, the Scottish Environment Protection Agency or the Natural Resources Body for Wales must be with reference to that body’s functions under the Control of Major Accident Hazards Regulations 2015 (S.I. 2015/483). 5
- (10) Consultation under subsection (7) with the Department of Agriculture, Environment and Rural Affairs in Northern Ireland must be with reference to the department’s functions under the Control of Major Accident Hazards Regulations (Northern Ireland) 2015 (S.R. (N.I.) 2015 No. 325). 10

Information

208 Power to require information

- (1) The Secretary of State may by notice in writing require any of the following to provide the Secretary of State with information relating to their relevant activities or assets— 15
 - (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes;
 - (b) a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes. 20
- (2) The Secretary of State may by notice in writing require a relevant wetstock manager to provide the Secretary of State with information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services. 25
- (3) In this Part “relevant wetstock manager” means a person who provides to persons who make retail supplies of core fuels in the United Kingdom stock management services in respect of such supplies.
- (4) The Secretary of State may only require information under this section for the purpose of maintaining or improving core fuel sector resilience. 30
- (5) A notice under subsection (1) or (2) may—
 - (a) specify the manner in which information is to be provided;
 - (b) specify time limits for providing information;
 - (c) require information to be provided at specified intervals.
- (6) Before giving a person a notice under subsection (1) or (2) the Secretary of State must— 35
 - (a) notify the person in writing of the proposed contents of the notice and of the period within which the person may make written representations with respect to the proposed requirement, and

- (b) consider any representations made by the person.
- (7) The period notified under subsection (6)(a) must begin on the date on which the notification is given and (subject to subsection (8)) must be not less than 14 days.
- (8) The Secretary of State may notify a period under subsection (6)(a) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is necessary to do so by reason of urgency. 5

209 Duty to report incidents

- (1) If at any time a person –
 - (a) knows, or has reason to suspect, that a notifiable incident is occurring or has occurred, and 10
 - (b) meets the condition in paragraph (a), (b) or (c) of subsection (2), that person must notify the Secretary of State of the incident as soon as possible.
- (2) The conditions mentioned in subsection (1)(b) are that – 15
 - (a) the person is carrying on core fuel sector activities in the course of a business which has capacity in excess of 500,000 tonnes;
 - (b) the person is a Part 10 facility owner in whose case the owned facility has capacity in excess of 500,000 tonnes;
 - (c) the person is of a class or description specified in regulations made by the Secretary of State under this subsection. 20
- (3) In this section “notifiable incident”, in relation to a person, means an incident which affects the person’s relevant activities or assets in such a way as to create a significant risk of, or cause –
 - (a) disruption to, or 25
 - (b) a failure of,the continuity of supply of core fuels.
- (4) The Secretary of State may by notice in writing require a person who has given a notice under subsection (1) to provide further information about the incident. 30
- (5) Before giving a person a notice under subsection (4) the Secretary of State must –
 - (a) notify the person in writing of –
 - (i) the proposed contents of the notice, and
 - (ii) the period within which the person may make written representations with respect to the proposal, and 35
 - (b) consider any representations made by the person.
- (6) The period notified under subsection (5)(a)(ii) must begin on the date on which the notification is given and (subject to subsection (7)) must be not less than 14 days. 40

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- (7) The Secretary of State may notify a period under subsection (5)(a)(ii) that is less than 14 days but not less than 7 days if the Secretary of State considers that it is necessary to do so by reason of urgency.
- (8) A notice under subsection (4) may specify –
- (a) the manner in which information is to be provided, and 5
 - (b) time limits for providing information.
- (9) Where a notification under subsection (1) is not made in writing, it must be confirmed in writing as soon as possible.
- (10) Regulations under subsection (2)(c) may specify the meaning that “relevant activities or assets” is to have in subsection (3) in relation to persons of a class or description of persons specified in the regulations. 10
- (11) Regulations under subsection (2)(c) are subject to the affirmative procedure.
- 210 Contravention of requirement under section 208 or 209**
- (1) A person who, without reasonable excuse, fails to comply with a requirement imposed by a notice under section 208(1) or (2) or 209(4) commits an offence. 15
- (2) A person who, without reasonable excuse, fails to comply with section 209(1) commits an offence.
- (3) A person who commits an offence under this section is liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 20
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 25
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).
- 211 Provision of information at specified intervals** 30
- (1) The Secretary of State may by regulations require any of the following to provide to the Secretary of State, at intervals specified in the regulations, information relating to their relevant activities or assets –
- (a) a person carrying on core fuel sector activities in the course of a business which has capacity in excess of 1,000 tonnes; 35
 - (b) a Part 10 facility owner whose owned facility has capacity in excess of 1,000 tonnes.
- (2) The Secretary of State may by regulations require a relevant wetstock manager to provide to the Secretary of State, at intervals specified in the regulations,

information relating to the relevant activities or assets of a person carrying on core fuel sector activities to whom the relevant wetstock manager provides stock management services.

- (3) The power to make regulations under this section may only be exercised for the purpose of maintaining or improving core fuel sector resilience. 5
- (4) The regulations may make provision about –
 - (a) the information to be provided;
 - (b) the manner in which information is to be provided;
 - (c) time limits for providing information.
- (5) Regulations under this section may provide that any person who, without reasonable excuse, fails to comply with a requirement imposed by the regulations commits an offence. 10
- (6) Regulations under this section are subject to the affirmative procedure.

212 Disclosure of information held by the Secretary of State

- (1) Subsection (2) applies to information held by the Secretary of State which was provided to the Secretary of State under section 208, 209 or 211. 15
 - (2) The information may be disclosed –
 - (a) to any government department or devolved authority for the purpose of –
 - (i) maintaining or improving core fuel sector resilience, or 20
 - (ii) restoring, or counteracting a disruption to, or failure of, continuity of supply of core fuels (or counteracting the potential adverse impact of any such disruption or failure), or
 - (b) if the disclosure is necessary for the purpose of criminal proceedings.
 - (3) Nothing in this section authorises the making of a disclosure which – 25
 - (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
 - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.
- In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account. 30
- (4) In subsection (2) “devolved authority” means –
 - (a) the Welsh Ministers,
 - (b) the Scottish Ministers, or
 - (c) a Northern Ireland department. 35

213 Disclosure of information by HMRC

- (1) Her Majesty’s Revenue and Customs (or anyone acting on their behalf) may disclose information to the Secretary of State for the purpose of facilitating

the exercise by the Secretary of State of functions relating to core fuel sector resilience.

- (2) A person who receives information as a result of this section may not—
- (a) use the information for a purpose other than that mentioned in subsection (1), or 5
 - (b) further disclose the information,
 except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) If a person discloses information in contravention of subsection (2)(b) which relates to a person whose identity— 10
- (a) is specified in the disclosure, or
 - (b) can be deduced from it,
- section 19 of the Commissioners for Revenue and Customs Act 2005 (offence of wrongful disclosure) applies in relation to that disclosure as it applies in relation to a disclosure of information in contravention of section 20(9) of that Act. 15
- (4) This section does not limit the circumstances in which information may be disclosed under section 18(2) of the Commissioners for Revenue and Customs Act 2005 or under any other enactment or rule of law.
- (5) Nothing in this section authorises the making of a disclosure which— 20
- (a) contravenes the data protection legislation (as defined in section 3 of the Data Protection Act 2018), or
 - (b) is prohibited by any of Parts 1 to 7 of, or Chapter 1 of Part 9 of, the Investigatory Powers Act 2016.
- In determining whether a disclosure would fall within paragraph (a) or (b), the powers conferred by this section are to be taken into account. 25

Appeal against notice or direction

214 Appeal against notice or direction

- (1) A person to whom a direction under section 204 or a notice under section 208 or 209(4) is given may appeal to the First-tier Tribunal against the direction or notice on the ground that the decision to give it— 30
- (a) is based on an error of fact,
 - (b) is wrong in law, or
 - (c) is unfair or unreasonable.
- (2) On an appeal under this section the Tribunal may— 35
- (a) confirm or cancel the direction or notice, or
 - (b) refer the matter back to the Secretary of State for reconsideration with such directions (if any) as the Tribunal considers appropriate.

CHAPTER 3

ENFORCEMENT

Offences

215 False statements etc

- (1) It is an offence for a person to make a statement which the person knows is false or materially misleading – 5
- (a) in responding to a requirement imposed by the Secretary of State –
 - (i) under section 208 (power to require information),
 - (ii) under section 209(4) (duty to report incidents), or
 - (iii) under regulations under section 211 (provision of information at specified intervals), or 10
 - (b) in making any other statement to the Secretary of State in connection with any of the Secretary of State’s functions under this Part.
- (2) A person who commits an offence under this section is liable –
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 15
 - (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both); 20
 - (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both);
 - (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both). 25

216 Offences under regulations

- (1) This section applies to regulations under –
- (a) section 207 (corresponding powers to make regulations);
 - (b) section 211 (provision of information at specified intervals).
- (2) Regulations to which this section applies may provide for an offence under the regulations to be triable – 30
- (a) only summarily, or
 - (b) either summarily or on indictment.
- (3) Regulations to which this section applies may provide for an offence under the regulations that is triable either way to be punishable – 35
- (a) on summary conviction in England and Wales with imprisonment for a term not exceeding the period specified or a fine (or both);

- (b) on summary conviction in Scotland or Northern Ireland with imprisonment for a term not exceeding the period specified or a fine not exceeding the statutory maximum (or both);
- (c) on conviction on indictment, with imprisonment for a term not exceeding the period specified, which may not exceed two years, or a fine (or both). 5
- (4) A period specified under subsection (3)(a) may not exceed the general limit in a magistrates' court.
- (5) A period specified under subsection (3)(b) may not exceed – 10
- (a) in relation to Scotland, 12 months;
- (b) in relation to Northern Ireland, 6 months.
- (6) Regulations to which this section applies may provide for a summary offence under the regulations to be punishable – 15
- (a) with imprisonment for a term not exceeding the period specified,
- (b) with –
- (i) in England and Wales, a fine (or a fine not exceeding an amount specified, which must not exceed level 4 on the standard scale), or
- (ii) in Scotland or Northern Ireland, a fine not exceeding the amount specified, which must not exceed level 5 on the standard scale, or 20
- (c) with both.
- (7) A period specified under subsection (6)(a) may not exceed –
- (a) in relation to England and Wales – 25
- (i) 6 months, in relation to offences committed before the date on which section 281(5) of the Criminal Justice Act 2003 comes into force, or
- (ii) 51 weeks, in relation to offences committed on or after that date,
- (b) in relation to Scotland, 12 months, 30
- (c) in relation to Northern Ireland, 6 months.
- (8) In this section “specified” means specified in the regulations.

217 Proceedings for offences

- Proceedings for an offence under this Part (including an offence created by regulations under section 207 or 211) – 35
- (a) may not be brought in England and Wales except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) may not be brought in Northern Ireland except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland. 40

218 Liability of officers of entities

- (1) Where an offence under this Part committed by a body corporate is proved –
- (a) to have been committed with the consent or connivance of an officer of the body corporate, or
 - (b) to be attributable to neglect on the part of an officer of the body corporate,
- that officer (as well as the body corporate) commits the offence and is liable to be proceeded against and dealt with accordingly. 5
- (2) In subsection (1) “officer”, in relation to a body corporate, means –
- (a) any director, manager, secretary or other similar officer of the body corporate, or 10
 - (b) any person purporting to act in any such capacity.
- (3) In subsection (2) “director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate.
- (4) Where an offence under this Part is committed by a Scottish partnership and is proved to have been committed with the consent or connivance of a partner, or to be attributable to any neglect on the part of a partner, that partner (as well as the partnership) commits the offence and is liable to be proceeded against and dealt with accordingly. 15

Enforcement undertakings 20

219 Enforcement undertakings

- (1) Subsection (2) applies if –
- (a) the Secretary of State has reasonable grounds to suspect that a person has committed an offence falling within subsection (5),
 - (b) the person offers to the Secretary of State an enforcement undertaking in respect of the relevant act or omission, and 25
 - (c) the Secretary of State accepts that undertaking.
- (2) Unless the person has failed to comply with the undertaking (or any part of it) the person may not at any time be convicted of that offence in respect of the relevant act or omission. 30
- (3) In this Part “enforcement undertaking” means an undertaking to take, within any period specified in the undertaking, action –
- (a) for any of the purposes in subsection (4), or
 - (b) of a description specified in regulations made by the Secretary of State.
- (4) The purposes mentioned in subsection (3) are – 35
- (a) to secure that the offence does not continue or recur,
 - (b) to secure that the position is, so far as possible, restored to what it would have been if the offence had not been committed, or
 - (c) to benefit any person affected by the offence.

-
- (5) The following offences fall within this subsection –
- (a) an offence under –
 - (i) section 206 (failure to comply with a direction),
 - (ii) section 210 (contravention of requirement under section 208 or 209), or 5
 - (iii) section 215 (false statements etc);
 - (b) an offence, other than an offence triable only summarily, that is created by regulations under –
 - (i) section 207 (corresponding powers to make regulations), or
 - (ii) section 211 (provision of information at regular intervals). 10
- (6) The reference in subsection (4)(c) to action to “benefit any person affected by the offence” includes action by way of the payment of a sum of money.
- (7) Where a person from whom the Secretary of State has accepted an enforcement undertaking has failed to comply fully with the undertaking but has complied with part of it, the partial compliance must be taken into account in any decision whether to institute any criminal proceedings in respect of the offence in question. 15
- (8) In this section “relevant act or omission” means an act or omission of the person to which the grounds mentioned in subsection (1)(a) relate.
- (9) Regulations under subsection (3)(b) are subject to the affirmative procedure. 20
- (10) Schedule 17 contains further provision about enforcement undertakings, including provision about –
- (a) procedure;
 - (b) compliance certificates;
 - (c) appeals. 25

Guidance

220 Guidance: criminal and civil sanctions

- (1) The Secretary of State must issue guidance as to –
- (a) the sanctions (including criminal sanctions) to which a person who commits an offence under this Part may be liable, 30
 - (b) the action which the Secretary of State may take to enforce offences under this Part, whether by virtue of section 219 and Schedule 17 or otherwise, and
 - (c) the circumstances in which the Secretary of State is likely to take any such action. 35
- (2) The Secretary of State –
- (a) must issue guidance about how the Secretary of State intends to exercise the Secretary of State’s functions under section 219 and Schedule 17;

- (b) must have regard to the guidance in exercising the Secretary of State’s functions under those provisions.
- (3) Before issuing guidance under this section, the Secretary of State must—
 - (a) prepare a draft of the proposed guidance;
 - (b) consult such persons as the Secretary of State considers appropriate; 5
 - (c) comply with the requirements of section 221.
- (4) The Secretary of State may from time to time revise guidance issued under this section and issue revised guidance.
- (5) Subsection (3) applies to revised guidance as it applies to the original guidance.
- (6) The Secretary of State must arrange for the publication of guidance (or revised guidance) issued under this section. 10

221 Guidance: Parliamentary scrutiny

- (1) Before issuing guidance under section 220, the Secretary of State must lay a draft of the proposed guidance before both Houses of Parliament.
- (2) The Secretary of State must not issue the guidance until after the period of 40 days beginning with— 15
 - (a) the day on which the draft is laid before both Houses of Parliament, or
 - (b) if the draft is laid before the House of Lords on one day and the House of Commons on another, the later of those two days. 20
- (3) If before the end of that period either House resolves that the guidance should not be issued, the Secretary of State may not issue it.
- (4) In reckoning any period of 40 days for the purposes of subsection (2), no account is to be taken of any time during which—
 - (a) Parliament is dissolved or prorogued, or 25
 - (b) both Houses are adjourned for more than four days.

CHAPTER 4

GENERAL

Financial assistance

222 Financial assistance for resilience and continuity purposes 30

- (1) There may be paid out of money provided by Parliament expenditure incurred by the Secretary of State with the consent of the Treasury in giving, or in connection with giving, financial assistance to a core fuel sector participant for the purpose of—
 - (a) maintaining or improving core fuel sector resilience, or 35
 - (b) securing or maintaining continuity of supply of core fuels.

-
- (2) Financial assistance under this section may be given in any form.
- (3) Financial assistance under this section may, in particular, be given by way of—
- (a) grants,
 - (b) loans, 5
 - (c) guarantee or indemnity,
 - (d) investment by acquisition (directly or through another body corporate) of shares in or securities of a body corporate,
 - (e) investment by the acquisition of any undertaking or assets, or
 - (f) incurring expenditure for the benefit of the person assisted. 10
- (4) Financial assistance under this section may be given on such terms and conditions as the Secretary of State considers appropriate (including provision for repayment, with or without interest).
- (5) The Secretary of State is not authorised by this section to give financial assistance in the way described in subsection (3)(d) without the consent of the body corporate concerned. 15

Power to amend thresholds

223 Power to amend thresholds

- (1) The Secretary of State may by regulations amend or modify any provision mentioned in subsection (2) for the purpose of varying any amount for the time being specified in that provision. 20
- (2) The provisions are—
- (a) section 204(7) (directions to core fuel sector participants);
 - (b) section 207(5) (corresponding powers to make regulations);
 - (c) section 208(1) (power to require information); 25
 - (d) section 209(2)(a) and (b) (duty to report incidents);
 - (e) section 211(1) (provision of information at specified intervals).
- (3) Regulations under this section are subject to the affirmative procedure.

Interpretation of Part 10

224 Interpretation of Part 10

- (1) In this Part—
- “company” means a company within the meaning of section 1 of the Companies Act 2006;
 - “continuity of supply of core fuels” is to be interpreted in accordance with section 203(7); 35
 - “core fuel sector activity” has the meaning given by section 203;
 - “core fuel sector participant” has the meaning given by section 203(6);

- “core fuel sector resilience” has the meaning given by section 203(5);
- “core fuels” has the meaning given by section 203(4);
- “crude oil” means any liquid hydrocarbon mixture occurring naturally in the earth whether or not treated to render it suitable for transportation, and includes – 5
- (a) crude oils from which distillate fractions have been removed, and
 - (b) crude oils to which distillate fractions have been added;
- “crude oil based fuel” means any fuel comprised wholly or mainly of crude oil or substances derived from crude oil; 10
- “enactment” includes –
- (a) an enactment contained in subordinate legislation (as defined in section 21 of the Interpretation Act 1978);
 - (b) an enactment contained in, or in an instrument made under, a Measure or Act of Senedd Cymru; 15
 - (c) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament;
 - (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;
 - (e) any retained direct EU legislation; 20
- “enforcement undertaking” has the meaning given by section 219;
- “oil” means –
- (a) crude oil;
 - (b) crude oil based fuels;
 - (c) components; 25
- “the owned facility”, in relation to a Part 10 facility owner, has the meaning given by section 203(11);
- “Part 10 facility owner” has the meaning given by section 203(11);
- “person carrying on core fuel sector activities” is to be interpreted in accordance with section 203(13); 30
- “relevant activities or assets” is to be interpreted in accordance with section 203(10);
- “relevant wetstock manager” has the meaning given by section 208(3);
- “renewable transport fuel” has the meaning given by section 132 of the Energy Act 2004; 35
- “terminal” means any site for the storage in bulk of oil or renewable transport fuel.
- (2) In this Part references to the “capacity” of a business or of a facility or infrastructure are to be interpreted in accordance with section 204(8).
- (3) References in this Part to a person carrying on business include references to a person carrying on business in partnership with one or more other persons. 40

- (4) For the purposes of the definition of “oil” in subsection (1) “component” means any substance (whether or not derived from crude oil) of a kind which is mixed with other substances to produce a crude oil based fuel.

PART 11

OIL AND GAS

5

Environmental protection

225 Arrangements for responding to marine oil pollution

- (1) The Secretary of State may, by regulations, make provision—
- (a) requiring a person responsible for infrastructure or a place to which subsection (2) applies to have an emergency plan setting out arrangements for responding to incidents which cause, or may cause, marine oil pollution, 10
 - (b) in connection with that requirement, and
 - (c) about the reporting of such incidents.
- (2) This subsection applies to— 15
- (a) an offshore installation, or an offshore well, that is used for or in connection with—
 - (i) offshore oil and gas operations, or
 - (ii) offshore production or storage of gas;
 - (b) offshore infrastructure, including pipelines, connected to such an installation or well; 20
 - (c) a harbour;
 - (d) a facility, that is not offshore, for handling or storing oil or gas;
 - (e) infrastructure or a place described in any of paragraphs (a) to (d) that is being decommissioned or has been decommissioned or abandoned. 25
- (3) Regulations under subsection (1) may, in particular, make provision in connection with the implementation, maintenance and review of an emergency plan, including provision requiring—
- (a) a person to refrain from carrying out activities that may cause marine oil pollution unless and until an emergency plan is in place; 30
 - (b) an emergency plan to be reviewed in accordance with the regulations;
 - (c) the amendment or replacement of an emergency plan in circumstances specified in the regulations;
 - (d) a person to ensure readiness to carry out an emergency plan;
 - (e) a person to carry out an emergency plan. 35
- (4) Regulations under subsection (1) about the reporting of incidents may, in particular—
- (a) set out—
 - (i) circumstances in which a report must be made;

- (ii) by whom a report must be made;
 - (iii) to whom a report must be made;
 - (b) make provision as to the content and form of a report and the time by which a report must be made.
- (5) The Secretary of State may, by regulations, make provision enabling the inspection of infrastructure or a place to which subsection (2) applies. 5
- (6) Regulations under subsection (1) or (5) may, in particular, make provision—
 - (a) about the meaning which any expression used in subsection (1), (2), (3), (4) or (5) is to have for the purposes of regulations under subsection (1) or (5); 10
 - (b) conferring functions on any person;
 - (c) providing for the charging of fees (but see subsection (7));
 - (d) authorising or requiring, or restricting or prohibiting, the supply or keeping of information (including provision authorising or requiring the supply or keeping of information that would not otherwise be permitted); 15
 - (e) creating criminal offences or impose civil penalties (but see subsection (8));
 - (f) for the purpose of securing compliance with requirements imposed by or under regulations under subsection (1) or (5). 20
- (7) Regulations under subsection (1) or (5) which provide for a fee to be charged in respect of a person performing a function or doing any other thing must secure that, taking one year with another, the income from the fees does not exceed the cost of performing the function or doing the thing.
- (8) Regulations under subsection (1) or (5) may not provide— 25
 - (a) for a criminal offence to be punishable with imprisonment;
 - (b) for a civil penalty to exceed £50,000.
- (9) Regulations under subsection (1) or (5) containing any of the following (with or without other provision) are subject to the affirmative procedure—
 - (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty); 30
 - (b) provision specifying a civil penalty amount.
- (10) Any other regulations under subsection (1) or (5) are subject to the negative procedure. 35
- (11) In this section—
 - “gas” means—
 - (a) “gas” within the meaning of section 2 of the Energy Act 2008,
 - (b) carbon dioxide, and
 - (c) hydrogen; 40
 - “oil” means petroleum in any form including crude oil, fuel oil, sludge, oil refuse and refined products.

226 Habitats: reducing effects of offshore oil or gas activities etc

- (1) The Secretary of State may, by regulations, make provision requiring the Secretary of State to take into account the implications for relevant sites when deciding whether, or how, to carry out a function (including a function under other regulations under this section) which relates to— 5
- (a) offshore oil and gas activities, or
 - (b) offshore production or storage of gas.
- (2) The Secretary of State may, by regulations, make provision— 10
- (a) prohibiting a specified description of activities from being carried out unless the consent of the Secretary of State has been obtained, and
 - (b) requiring a person who has obtained such a consent to carry out any activity to which the consent relates in accordance with the consent (and any conditions to which the consent is subject).
- (3) The Secretary of State may, by regulations, make provision preventing a specified description of licence from being granted unless the Secretary of State has or Scottish Ministers have— 15
- (a) carried out a specified description of assessment, and
 - (b) confirmed that the outcome of that assessment does not prevent the licence from being granted.
- (4) The Secretary of State may, by regulations, make provision— 20
- (a) authorising the Secretary of State to give a person directions to take steps, or to refrain from taking steps, and
 - (b) requiring a person given such a direction to comply with it.
- (5) The Secretary of State may make regulations under subsection (2), (3) or (4) only if the Secretary of State considers that the regulations would contribute to the protection of relevant sites from adverse effects of— 25
- (a) offshore oil and gas activities, or
 - (b) offshore production or storage of gas.
- (6) For the purposes of regulations made under another provision of this section, “relevant site” has the meaning determined in accordance with the regulations; and those regulations— 30
- (a) must be framed so that relevant sites consist of natural habitats or habitats of species;
 - (b) may, where they are framed by reference to provision made by other legislation, be framed so as to include natural habitats or habitats of species that are likely to fall within that provision of that other legislation. 35
- (7) Regulations under this section may— 40
- (a) make provision about the meaning which any expression used in this section is to have for the purposes of regulations under this section;
 - (b) confer functions on any person (including a function of giving advice in relation to the application or exercise of any other function, whether

- exercisable by that or another person, under regulations under this section);
- (c) provide for the modification or revocation of any consent given under regulations under subsection (2).
 - (d) provide for the charging of fees; 5
 - (e) authorise, or restrict or prohibit, the supply or keeping of information (including authorisation of the supply or keeping of information that would not otherwise be permitted);
 - (f) create criminal offences or impose civil penalties (but see subsection (8)); 10
 - (g) make other provision for the purpose of securing compliance with requirements imposed by or under regulations under this section.
- (8) Regulations under this section may not provide—
- (a) for a criminal offence to be punishable with imprisonment or, on summary conviction, to a fine exceeding the statutory maximum; 15
 - (b) for a civil penalty of a fixed amount to exceed £2,500 or of a variable amount to exceed £50,000.
- (9) Regulations under this section containing any of the following (with or without other provision) are subject to the affirmative procedure—
- (a) provision creating a criminal offence or civil penalty (but excluding provision modifying the circumstances in which a person is guilty of an existing offence or liable for an existing civil penalty); 20
 - (b) provision specifying a civil penalty amount.
- (10) Any other regulations under this section are subject to the negative procedure.
- (11) In this section— 25
- “licence” means anything (however described) which permits a person to do something;
 - “specified” means specified in regulations under this section.

Decommissioning: charging schemes

227 Offshore oil and gas decommissioning: charging schemes 30

- (1) In the Petroleum Act 1998, after section 38B insert—

“38C Charging schemes

- (1) The Secretary of State may make a scheme providing for payment to the Secretary of State of charges for or in connection with the carrying out by the Secretary of State of the Secretary of State’s functions under this Part. 35
- (2) A scheme under this section may provide that a charge is to be of an amount—
 - (a) specified in the scheme, or

- (b) determined by the Secretary of State in accordance with the scheme.
- (3) A scheme under this section may specify matters to which the Secretary of State must have regard when determining the amount of a charge.
- (4) A scheme under this section may specify – 5
- (a) how a charge is to be paid;
 - (b) when a charge is to be paid;
 - (c) the person by whom a charge is to be paid.
- (5) Provision made by virtue of subsection (4)(c) may confer a discretion on the Secretary of State. 10
- (6) A scheme under this section may –
- (a) include incidental, supplementary or consequential provision;
 - (b) include transitory or transitional provision or savings;
 - (c) make different provision for different purposes.
- (7) Before making a scheme under this section, the Secretary of State must consult organisations in the United Kingdom that appear to the Secretary of State to be representative of persons who are likely to be affected by the scheme. 15
- (8) The Secretary of State must not make a scheme under this section without the consent of the Treasury. 20
- (9) The Secretary of State may amend or revoke a scheme under this section.
- (10) The Secretary of State must publish – 25
- (a) a scheme under this section,
 - (b) any amendment or revocation of such a scheme, and
 - (c) the date on which any such scheme, amendment or revocation takes effect,
- before the date on which the scheme, amendment or revocation takes effect.”
- (2) In section 30 of the Energy Act 2008 (abandonment of installations), in subsection (2) – 30
- (a) omit the “and” after paragraph (a);
 - (b) after paragraph (a) insert –
- “(aa) references in that Part to the Secretary of State are accordingly to be read as references to the Scottish Ministers, and”.
- 35
- (3) The Petroleum Act 1998 is amended as follows in consequence of subsection (1).
- (4) In section 29 (preparation of programmes), omit subsection (5).

- (5) In section 33(4) (failure to submit programmes), for the words from “any fee” to the end substitute “any charge that would have been payable by those persons in accordance with a scheme under section 38C if they had complied with the notice under section 29(1)”.
- (6) In section 34(4) (revision of programmes), omit the words from “and a person” to the end. 5
- (7) In section 39 (regulations) –
 - (a) in subsection (2), omit paragraph (e);
 - (b) in subsection (5), omit the words from “and he” to the end.

Change in control of licensee 10

228 Model clauses of petroleum licences

- (1) Schedule 18 amends the model clauses contained in –
 - (a) the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225) (“the 2008 Regulations”), and
 - (b) the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686) (“the 2014 Regulations”). 15
- (2) Where a licence granted (or having effect as if granted) by the Oil and Gas Authority under the Petroleum (Production) Act 1934 or the Petroleum Act 1998 –
 - (a) is in force immediately before the commencement of Part 1 of Schedule 18, and 20
 - (b) incorporates model clauses 41 and 42 in the Schedule to the 2008 Regulations (whether or not any provision of those model clauses is modified or excluded),the licence has effect with the amendments provided for by paragraphs 2 to 4 of Schedule 18. 25
- (3) Where a licence granted (or having effect as if granted) by the Oil and Gas Authority under the Petroleum (Production) Act 1934 or the Petroleum Act 1998 –
 - (a) is in force immediately before the commencement of Part 2 of Schedule 18, and 30
 - (b) incorporates model clauses 41 and 42 in Schedule 2 to the 2014 Regulations (whether or not any provision of those model clauses is modified or excluded),the licence has effect with the amendments provided for by paragraphs 6 to 8 of Schedule 18. 35
- (4) The power conferred by reason of the amendment made by paragraph 8(2) of Schedule 18 to partially revoke a licence because of the occurrence of an event mentioned in model clause 41(2)(h) in Schedule 2 to the 2014 Regulations may not be exercised as a result of such an event which occurred before the commencement of paragraph 8 of Schedule 18. 40

- (5) A reference in any document to provisions of a licence which are amended by Schedule 18 is to be construed, unless the nature of the document or the context otherwise requires, as a reference to those provisions as amended.
- (6) A provision inserted in a licence by virtue of Schedule 18 may be altered or deleted by deed executed by the Secretary of State and the licensee or, as respects Scotland, by an instrument subscribed or authenticated by the Secretary of State and the licensee in accordance with the Requirements of Writing (Scotland) Act 1995. 5

229 Power of OGA to require information about change in control of licensee

After section 5C of the Petroleum Act 1998 insert – 10

“5D OGA’s power to require information about change in control of licensee

- (1) This section applies in relation to a licence granted (or having effect as if granted) by the OGA under this Part which includes provisions prohibiting a change in control of a licensee which is a company without the OGA’s consent. 15
- (2) The OGA may by notice in writing require a person within subsection (3) to provide the OGA with any information that it requires for the purpose of exercising its functions in relation to a change or potential change in control of a licensee which is a company. 20
- (3) The persons within this subsection are –
- (a) the company;
 - (b) the person who (if consent were granted) would take control of the company;
 - (c) if the company and another person or persons are the licensee, that other person or those other persons; 25
 - (d) any person not within any of paragraphs (a) to (c) who appears to the OGA to have information that it requires as mentioned in subsection (2).
- (4) The power conferred by this section does not include power to require the provision of any information that would be protected from disclosure or production in legal proceedings on grounds of legal professional privilege or, in Scotland, confidentiality of communications. 30
- (5) Nothing in this section limits any power of the OGA to require information under – 35
- (a) regulations under this Part, or
 - (b) the terms of a licence under this Part.”

PART 12

CIVIL NUCLEAR SECTOR

CHAPTER 1

CIVIL NUCLEAR SITES

- 230 Application to the territorial sea of requirement for nuclear site licence** 5
- (1) The Nuclear Installations Act 1965 is amended in accordance with subsections (2) and (3).
- (2) In section 1 (restriction of certain nuclear installations to licensed sites), after subsection (11) insert –
- “(12) In this section, “site” includes a site situated wholly or partly in or under the territorial sea adjacent to the United Kingdom.” 10
- (3) In section 26(1) (interpretation), in the definition of “the appropriate national authority” –
- (a) in paragraph (a), after “Scotland” insert “(including the territorial sea adjacent to them)”; 15
- (b) in paragraph (b), after “Northern Ireland” insert “(including the territorial sea adjacent to it)”.
- (4) In section 68 of the Energy Act 2013 (nuclear safety purposes), after subsection (3) insert –
- “(4) In the definition of “relevant nuclear installation” in subsection (3), the reference to a site in England, Wales or Scotland includes a site situated wholly or partly in or under the territorial sea adjacent to them.” 20
- 231 Decommissioning of nuclear sites etc**
- (1) The Nuclear Installations Act 1965 is amended as follows. 25
- (2) In section 1 (restriction of certain nuclear installations to licensed sites), after subsection (12) (inserted by section 230 of this Act) insert –
- “(13) The reference in subsection (1) to operating a nuclear reactor or an installation of a prescribed kind includes a reference to decommissioning a nuclear reactor or such an installation.” 30
- (3) In section 3 (grant and variation of nuclear site licences) –
- (a) in subsection (12)(b), for the words from “there” to the end substitute “the applicable condition or conditions set out in section 3A are met.”;

(b) after subsection (12) insert—

“(12A) The appropriate national authority must consult the Health and Safety Executive before varying a nuclear site licence under subsection (12).”

(4) After section 3 insert—

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“3A Exclusion of part of site from licence: applicable conditions

(1) This section sets out the applicable condition or conditions for excluding any part of a licensed site (“the relevant part”) from a nuclear site licence.

(2) Where a prescribed disposal installation is or has at any time been situated within the relevant part, the applicable condition is that there is no danger from ionising radiations from anything on the relevant part.

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(3) Where any nuclear installation, other than a prescribed disposal installation or a licensed disposal site, is or has at any time been situated within the relevant part, the applicable conditions (subject to subsection (5)) are that—

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(a) the use of any such installation within the relevant part has permanently ceased,

(b) appropriate measures for the containment and control of any remaining radioactivity are in place,

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(c) the relevant part meets the radioactivity exclusion criteria and the dose exclusion criteria, and

(d) it is no longer necessary or desirable in the interests of safety for a nuclear site licence to be in force in respect of the relevant part.

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(4) In any other case, the applicable conditions (subject to subsection (5)) are that—

(a) the relevant part meets the dose exclusion criteria, and

(b) it is no longer necessary or desirable in the interests of safety for a nuclear site licence to be in force in respect of the relevant part.

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(5) In a case to which, but for this subsection, subsection (3) or (4) would apply, the licensee may elect that the condition set out in subsection (2) is to apply to the relevant part (instead of the conditions in subsection (3) or (4)).

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(6) In this section—

“2014 Decision” means the Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned, published on 30 October 2014 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency

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- of the Organisation for Economic Co-operation and Development;
- “dose exclusion criteria” means the criteria described in paragraph 3(b) of the Appendix to the 2014 Decision;
- “licensed disposal site” means a site that would be a relevant disposal site within the meaning of section 7B were a nuclear site licence not in force in respect of the site (see section 7B(5)(a)); 5
- “prescribed disposal installation” means an installation—
- (a) designed or adapted for the disposal of nuclear matter, and 10
 - (b) of a kind prescribed under section 1(1)(b) at any time after section 231 of the Energy Act 2022 comes into force;
- “radioactivity exclusion criteria” means the criteria described in paragraph 3(a) of the Appendix to the 2014 Decision; 15
- “safety”, in relation to the relevant part of a site, is to be construed in accordance with section 4(2).”
- (5) In section 5 (revocation and surrender of licences)—
- (a) in the heading, omit “and surrender”; 20
 - (b) in subsection (1)—
 - (i) omit the “or” after paragraph (a);
 - (ii) omit paragraph (b);
 - (c) in subsection (2), after “consult” insert “the Health and Safety Executive and”; 25
 - (d) in subsection (3), omit “or surrendered”;
 - (e) in subsection (15)(a), for the words from “that in the authority’s opinion” to the end substitute “—
 - (i) as respects the licensee’s period of responsibility for the licensed site, that in the authority’s opinion each part of the site meets the condition or conditions set out in section 5A that apply in relation to that part of the site, or 30
 - (ii) as respects the licensee’s period of responsibility for any part of the site, that in the authority’s opinion the part in question meets the condition or conditions set out in section 5A that apply in relation to that part.”; 35
 - (f) after subsection (15)(b) insert—
 - “(ba) the date when a person (whether the licensee or some other person) becomes the operator of a relevant disposal site comprising the site in question or, as the case may be, that part of it; 40

(bb) the date when the site or, as the case may be, the part of it in question becomes an excluded disposal site;”.

(6) After section 5 insert –

“5A End of period of responsibility: applicable conditions

- (1) This section sets out the applicable conditions for determining when a licensee’s period of responsibility for a part of a licensed site (“the relevant part”) ends under section 5(15)(a)(i) or (ii). 5
- (2) Where a prescribed disposal installation is or has at any time been situated within the relevant part, the applicable condition is that there is no danger from ionising radiations from anything on the relevant part. 10
- (3) Where any nuclear installation other than a prescribed disposal installation is or has at any time been situated within the relevant part, the applicable conditions (subject to subsection (5)) are that – 15
- (a) the use of any such installation within the relevant part has permanently ceased,
 - (b) appropriate provisions for the containment and control of any remaining radioactivity are in place, and
 - (c) the relevant part meets the radioactivity exclusion criteria and the dose exclusion criteria. 20
- (4) In any other case, the applicable condition (subject to subsection (5)) is that the relevant part meets the dose exclusion criteria.
- (5) In a case to which, but for this subsection, subsection (3) or (4) would apply, the licensee may elect that the condition set out in subsection (2) is to apply to the relevant part (instead of the conditions in subsection (3) or (4)). 25
- (6) In this section –
- “2014 Decision” means the Decision and Recommendation of the Steering Committee Concerning the Application of the Paris Convention to Nuclear Installations in the Process of Being Decommissioned, published on 30 October 2014 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development; 30
 - “dose exclusion criteria” means the criteria described in paragraph 3(b) of the Appendix to the 2014 Decision; 35
 - “installation exclusion criteria” means the criteria described in paragraph 3(a) of the Appendix to the 2014 Decision;
 - “prescribed disposal installation” means an installation – 40
 - (a) designed or adapted for the disposal of nuclear matter, and

- (b) of a kind prescribed under section 1(1)(b) at any time after section 231 of the Energy Act 2022 comes into force.”
- (7) In section 7B (duties in respect of relevant disposal sites)–
- (a) after subsection (2) insert– 5
- “(2A) The operator of a site that would be a relevant disposal site but for subsection (5)(a) is to be treated for the purposes of subsection (2)(a)(ii) as becoming the operator of the site on the date when–
- (a) the nuclear site licence in question is varied under section 3(12) to exclude the site from it, or 10
- (b) the nuclear site licence in question is revoked under section 5(1).”;
- (b) in subsection (5)(a), after “granted” insert “(subject to subsection (5A))”;
- (c) after subsection (5) insert– 15
- “(5A) Subsection (5)(a) does not apply where a licence has ceased to be in force in respect of the site as a result of section 3(12) (exclusion of part of site from licence) or section 5(1) (revocation of licence).”
- (8) In section 27(1) (application of Act to Northern Ireland), after paragraph (a) insert– 20
- “(aa) a reference to the Health and Safety Executive is to be construed as a reference to the Health and Safety Executive for Northern Ireland.”
- 232 Excluded disposal sites** 25
- (1) The Nuclear Installations Act 1965 is amended as follows.
- (2) In section 7B (duties in respect of relevant disposal sites)–
- (a) after subsection (2A) (inserted by section 231 of this Act) insert–
- “(2B) The operator of a site that would be a relevant disposal site but for subsection (7A) is to be treated for the purposes of subsection (2)(a)(ii) as becoming the operator of the site on the date when the site ceases to be an excluded disposal site.”; 30
- (b) after subsection (3)(d) insert–
- “(e) the date when the Secretary of State gives notice under section 7C(1)(b) that the site is an excluded disposal site.”; 35
- (c) after subsection (3) insert–
- “(3A) Where a site to which subsection (2B) applies was a relevant disposal site before it became an excluded disposal site, subsection (2) has effect in respect of– 40

-
- (a) the period beginning by virtue of subsection (2)(a), and
 - (b) any further period beginning by virtue of subsection (2B).”;
 - (d) in subsection (4), for “and (7)” substitute “, (7) and (7A)”;
 - (e) after subsection (7) insert – 5
 - “(7A) A site is not a relevant disposal site if it is an excluded disposal site.”;
 - (f) in subsection (9), in the definition of “appropriate permit” –
 - (i) after paragraph (a) insert – 10
 - “(aa) in relation to a site in Scotland, a permit under regulations made under section 18 of the Regulatory Reform (Scotland) Act 2014 (2014 asp 3) authorising a person to use the site for the disposal of radioactive waste;”;
 - (ii) in paragraph (b), omit “Scotland or”. 15
- (3) After section 7B insert –
- “7C Excluded disposal sites**
- (1) A site that is used or intended to be used for the operation of an installation for the disposal of nuclear matter is an excluded disposal site if – 20
 - (a) the Secretary of State is satisfied, on an application by the operator of the site, that the site meets –
 - (i) the permit condition,
 - (ii) the site history condition, and
 - (iii) such other conditions as may be prescribed, and 25
 - (b) the Secretary of State gives the operator notice in writing to that effect.
 - (2) In this section, “disqualifying matter” means nuclear matter that exceeds the radioactivity concentration limits set out in paragraph 3(a) of the Appendix to the 2016 Decision. 30
 - (3) The permit condition is that –
 - (a) an appropriate permit is in force in respect of the site, and
 - (b) that permit includes a condition preventing the site from receiving disqualifying matter.
 - (4) The site history condition is that – 35
 - (a) disqualifying matter has not at any time been accepted for disposal at the site, or
 - (b) any disqualifying matter previously accepted for disposal at the site has been removed from the site.
 - (5) An application under subsection (1)(a) must be accompanied by such documents as may be prescribed. 40

- (6) Regulations made under subsection (5) may –
- (a) specify requirements relating to the preparation, approval or review of a prescribed document;
 - (b) require an operator to provide a copy of a prescribed document to a person other than the Secretary of State; 5
 - (c) make different provision for different purposes.
- (7) A site ceases to be an excluded disposal site if the site no longer meets the permit condition or any condition prescribed under subsection (1)(a)(iii).
- (8) Where the appropriate permit in force in respect of an excluded disposal site is transferred to a new operator, the site ceases to be an excluded disposal site at the end of the period of one month beginning with the date on which the permit is transferred unless, before the end of that period – 10
- (a) the new operator notifies the Secretary of State of the transfer, and 15
 - (b) the Secretary of State gives the new operator notice in writing that the Secretary of State consents to the site continuing to be an excluded disposal site.
- (9) The Secretary of State must notify the Scottish Ministers of any notification given under subsection (1)(b) in relation to a site in Scotland. 20
- (10) In this section –
- “2016 Decision” means the Decision and Recommendation Concerning the Application of the Paris Convention on Third Party Liability in the Field of Nuclear Energy to Nuclear Installations for the Disposal of Certain Types of Low-level Radioactive Waste published on 16 January 2017 by the Steering Committee for Nuclear Energy of the Nuclear Energy Agency of the Organisation for Economic Co-operation and Development; 25
 - “appropriate permit” has the meaning given in section 7B(9). 30

7D Excluded disposal sites: acceptance of disqualifying matter

- (1) This section applies where disqualifying matter is accepted at an excluded disposal site; and for the purposes of this section the acceptance of such matter is referred to as “the breach”. 35
- (2) The operator of the site must notify the Secretary of State of the breach before the end of the notification period.
- (3) “The notification period” means the period of 21 days beginning with the day on which the operator becomes aware of the breach. 40

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- (4) The site ceases to be an excluded disposal site at the end of the notification period unless the operator complies with the duty under subsection (2).
- (5) An operator who has complied with the duty under subsection (2) must remove the disqualifying waste from the site before the end of the removal period. 5
- (6) “The removal period” means –
- (a) the period of 90 days beginning with the day on which the operator notifies the Secretary of State of the breach, or
 - (b) such longer period as the Secretary of State may specify before the end of the period mentioned in paragraph (a) if satisfied that the operator is taking all reasonable steps to remove the disqualifying matter from the site. 10
- (7) The site ceases to be an excluded disposal site at the end of the removal period unless before the end of that period – 15
- (a) the Secretary of State is satisfied that the disqualifying waste has been removed from the site, and
 - (b) the Secretary of State gives the operator notice in writing to that effect.
- (8) In this section, “disqualifying matter” has the meaning given by section 7C.” 20
- (4) In section 20 (furnishing of information relating to operator’s cover), after subsection (5) insert –
- “(5A) Subsection (4) does not apply where the operator of a relevant disposal site makes an application to the Secretary of State under section 7C(1)(a) (application for site to be excluded disposal site).” 25
- (5) In section 26(1) (interpretation), at the appropriate place insert –
- ““excluded disposal site” has the meaning given by section 7C;”.

233 Accession to Convention on Supplementary Compensation for Nuclear Damage 30

Schedule 19 contains amendments to the Nuclear Installations Act 1965 to implement the Convention on Supplementary Compensation for Nuclear Damage.

CHAPTER 2

CIVIL NUCLEAR CONSTABULARY

234 Provision of additional police services

- (1) After section 55 of the Energy Act 2004 insert—

“Additional services

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55A Provision of additional police services

- (1) The Constabulary may, with the consent of the Secretary of State, provide additional police services to any person.
- (2) In this Chapter, “additional police services” means services relating to the protection of places, persons or materials. 10
- (3) In subsection (2), “place” includes—
- (a) premises, facilities or equipment at a place;
 - (b) any vehicle, vessel, aircraft or hovercraft.
- (4) The Secretary of State must not give consent for the purposes of subsection (1) unless satisfied, on an application made by the Police Authority, that— 15
- (a) the provision of the additional police services in question is in the interests of national security,
 - (b) the provision by the Constabulary of those services will not prejudice the carrying out of its primary function under section 52(2), and 20
 - (c) it is reasonable in all the circumstances for the Constabulary to provide those services.
- (5) Before giving consent for the purposes of subsection (1), the Secretary of State must consult the chief constable. 25
- (6) The chief constable must ensure that the provision by the Constabulary of additional police services does not prejudice the carrying out of its primary function under section 52(2).
- (7) Consent given for the purposes of subsection (1)— 30
- (a) must specify the period of time (not exceeding 5 years) for which it has effect;
 - (b) may, subject to subsections (8) and (9), be withdrawn at any time if the Secretary of State is no longer satisfied of the matters mentioned in subsection (4).
- (8) Where the Secretary of State proposes to withdraw consent given for the purposes of subsection (1), the Secretary of State must consult the Police Authority. 35

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- (9) If, following consultation under subsection (8), the Secretary of State decides to withdraw consent given for the purposes of subsection (1), the Secretary of State must give such notice to the Police Authority as is reasonably practicable of the date on which the consent will cease to have effect. 5
- (10) The Police Authority may enter into an agreement with any person for the provision of additional police services by the Constabulary under this section.
- (11) The Police Authority must publish, as soon as is reasonably practicable and in such manner as the Authority considers appropriate— 10
- (a) the name of any person or persons to whom additional police services are to be provided under this section, and
- (b) (subject to subsections (12) and (13)) such information about the place or places at which those services are to be provided as the Police Authority considers may be published without prejudicing the interests of national security. 15
- (12) The Police Authority must consult the Secretary of State before publishing the information referred to in subsection (11)(b).
- (13) The Secretary of State may direct the Police Authority not to publish information about the place or places at which additional police services are to be provided where the Secretary of State considers that publication of the information would prejudice the interests of national security. 20
- (14) The Police Authority must comply with a direction given by the Secretary of State under subsection (13).” 25
- (2) In section 56 of that Act (jurisdiction of Constabulary), after subsection (3) insert—
- “(3A) A member of the Constabulary has the powers and privileges of a constable at every place where additional police services are being provided under section 55A.” 30
- (3) In section 71(1) of that Act (interpretation), at the appropriate place insert—
- ““additional police services” has the meaning given in section 55A(2);”.
- (4) The Counter-Terrorism Act 2008 is amended as follows—
- (a) in section 85(2) (costs of policing at gas facilities: England and Wales), after paragraph (a) omit “or” and insert— 35
- “(aa) the services of the Civil Nuclear Constabulary provided under section 55A of the Energy Act 2004, or”;
- (b) in section 86(2) (costs of policing at gas facilities: Scotland), after paragraph (a) omit “or” and insert—
- “(aa) the services of the Civil Nuclear Constabulary provided under section 55A of the Energy Act 2004, or”. 40

235 Provision of assistance to other forces

- (1) The Energy Act 2004 is amended as follows.
- (2) After section 55A (inserted by section 234 of this Act) insert—

“55B Provision of assistance to other forces

- (1) The chief constable may, on the application of the chief officer of a relevant force, provide members of the Constabulary or other assistance for the purpose of enabling that force to meet any special demand on its resources. 5
- (2) The policing body maintaining a relevant force for which assistance is provided under this section must pay to the Police Authority such charges— 10
 - (a) as may be agreed between the policing body and the Police Authority, or
 - (b) in the absence of any such agreement, as may be determined by the Secretary of State. 15
- (3) The chief constable must ensure that the provision of assistance under this section does not prejudice the carrying out of the primary function of the Constabulary under section 52(2).
- (4) In this section— 20
 - “chief officer” means—
 - (a) a chief officer of police of a police force for a police area in England and Wales;
 - (b) the chief constable of the Police Service of Scotland;
 - (c) the chief constable of the British Transport Police Force; or 25
 - (d) the chief constable of the Ministry of Defence Police;
 - “policing body” means—
 - (a) in relation to a police force for a police area in England and Wales, the relevant local policing body in the meaning of section 101(1) of the Police Act 1996; 30
 - (b) in relation to the Police Service of Scotland, the Scottish Police Authority;
 - (c) in relation to the British Transport Police Force, the British Transport Police Authority;
 - (d) in relation to the Ministry of Defence Police, the Secretary of State; 35
 - “relevant force” means—
 - (a) a police force for a police area in England and Wales;
 - (b) the Police Service of Scotland;
 - (c) the British Transport Police Force; or 40
 - (d) the Ministry of Defence Police.”

- (3) In section 59 (members of constabulary serving with other forces), after subsection (3) insert –

“(3A) For the purposes of this section, a member of the Constabulary who is provided for the assistance of a relevant force under section 55B is to be treated as serving with that force under arrangements of the kind mentioned in subsection (1).”

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236 Cross-border enforcement powers

- (1) Part 10 of the Criminal Justice and Public Order Act 1994 (cross-border enforcement) is amended as follows.

- (2) In section 136 (execution of warrants) –

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- (a) in subsection (1), after “2003” insert “or under section 55 of the Energy Act 2004”;
- (b) in subsection (2), after “2003” insert “or under section 55 of the Energy Act 2004”.

- (3) In section 137(2A) (cross-border powers of arrest), after “2003” insert “or under section 55 of the Energy Act 2004”.

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- (4) In section 137A(5) (additional cross-border powers of arrest: urgent cases), after “2003” insert “or under section 55 of the Energy Act 2004”.

- (5) In section 139 (search powers available on arrest) –

- (a) in subsection (10A), after “British Transport Police” insert “or a constable appointed as a member of the Civil Nuclear Constabulary”;
- (b) in subsection (10C), after “British Transport Police” insert “or a constable appointed as a member of the Civil Nuclear Constabulary”.

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- (6) In section 140(6A) (reciprocal powers of arrest), after “2003” insert “or under section 55 of the Energy Act 2004”.

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237 Publication of three-year strategy plan

- (1) Schedule 12 to the Energy Act 2004 (planning and reports about Constabulary) is amended as follows –

- (a) in paragraph 3(1) –

- (i) for “financial year” substitute “three-year period”;
- (ii) for “the three year period beginning with that year” substitute “that period”;

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- (b) for paragraph 3(5) substitute –

“(5) In sub-paragraph (1), “three-year period” means –

- (a) the period of three successive financial years beginning with 1 April 2024, and
- (b) each subsequent period of three successive financial years.”

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- (2) In consequence of the amendments made by subsection (1) –
 - (a) in section 54(1)(b) of the Energy Act 2004 (functions of senior officers), omit “most recently”;
 - (b) in Schedule 12 to that Act –
 - (i) in paragraph 2(3), omit “most recently”; 5
 - (ii) in paragraph 7(2)(a), omit “most recently issued”.

PART 13

GENERAL

238 Power to make consequential provision

- (1) The Secretary of State may by regulations make such provision as the Secretary of State considers appropriate in consequence of or in connection with –
 - (a) this Act, other than sections 155 to 158, or
 - (b) any provision made under this Act. 10
- (2) The power to make regulations under subsection (1) may (among other things) be exercised by amending, repealing or revoking –
 - (a) this Act or any provision made by or under primary legislation passed before, or in the same Session as, this Act; 15
 - (b) retained direct EU legislation.
- (3) In this section, “primary legislation” means –
 - (a) an Act, 20
 - (b) an Act or Measure of Senedd Cymru,
 - (c) an Act of the Scottish Parliament, or
 - (d) Northern Ireland legislation.
- (4) Subject to subsection (5), regulations under subsection (1) are subject to the negative procedure. 25
- (5) Where regulations under subsection (1) amend or repeal provision made by primary legislation, the regulations are subject to the affirmative procedure.

239 Regulations

- (1) Regulations under this Act made by the Secretary of State or the GEMA are to be made by statutory instrument. 30
- (2) Regulations under this Act may make –
 - (a) different provision for different purposes or different areas;
 - (b) supplementary, incidental, consequential, transitional or saving provision.
- (3) Where regulations under this Act are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing 35

them has been laid before, and approved by a resolution of, each House of Parliament.

- (4) Where regulations under this Act are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament. 5
- (5) Any provision that may be included in regulations under this Act subject to the negative procedure may be made by regulations subject to the affirmative procedure.

240 Interpretation

In this Act— 10

“the affirmative procedure” and “the negative procedure” are to be construed in accordance with section 239(3) and (4) respectively;

“the GEMA” means the Gas and Electricity Markets Authority.

241 Extent

- (1) The following provisions extend to England and Wales, Scotland and Northern Ireland, subject to subsection (5)— 15
- (a) Part 1, except Chapter 4;
 - (b) Part 2;
 - (c) Chapters 1 and 3 of Part 3;
 - (d) section 154; 20
 - (e) Chapter 1 of Part 7, except sections 171 and 172;
 - (f) Parts 10 and 11;
 - (g) Chapter 1 of Part 12;
 - (h) section 236;
 - (i) this Part. 25
- (2) The following provisions extend to England and Wales and Scotland only, subject to subsection (5)—
- (a) Chapter 4 of Part 1;
 - (b) Chapter 2 of Part 3;
 - (c) Parts 4 and 5; 30
 - (d) Part 6, except section 154;
 - (e) section 171;
 - (f) Part 8;
 - (g) Chapter 2 of Part 12, except section 236.
- (3) The following provisions extend to England and Wales only, subject to subsection (5)— 35
- (a) Chapter 2 of Part 7;
 - (b) Part 9.
- (4) Section 172 extends to Scotland only.

- (5) Any amendment, repeal or revocation has the same extent as the provision amended, repealed or revoked, subject to subsection (6).
- (6) Paragraph 4 of Schedule 4 extends to England and Wales, Scotland and Northern Ireland.

242 Commencement

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- (1) The provisions of this Act come into force on such day or days as the Secretary of State may by regulations appoint, subject to subsections (2) to (4).
- (2) The following provisions come into force on the day on which this Act is passed –
 - (a) section 154 (including Schedule 13); 10
 - (b) Part 7;
 - (c) sections 235 and 236;
 - (d) this Part.
- (3) The following provisions come into force at the end of the period of 2 months beginning with the day on which this Act is passed – 15
 - (a) Part 1;
 - (b) Part 2, except Chapter 4;
 - (c) Chapter 2 of Part 3;
 - (d) section 111;
 - (e) section 153 (including Schedule 12); 20
 - (f) sections 161 to 164;
 - (g) Part 9;
 - (h) section 227.
- (4) Section 233 (including Schedule 19) comes into force on the day on which the Convention on Supplementary Compensation for Nuclear Damage comes into force in respect of the United Kingdom. 25
- (5) The Secretary of State must publish a notice of the date of that day as soon as possible afterwards.
- (6) Regulations under subsection (1) may appoint different days for different purposes or areas. 30
- (7) The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.

243 Short title

This Act may be cited as the Energy Act 2022.

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SCHEDULES

SCHEDULE 1

Section 16

INTERIM POWER OF SECRETARY OF STATE TO GRANT LICENCES

- 1 (1) Sections 7 to 12 are to have effect with the following modifications until the end of the interim period. 5
- (2) In this Schedule “the interim period” means the period beginning when this Schedule comes into force and ending with whatever day the Secretary of State specifies by regulations.
- (3) Regulations under this paragraph are subject to the negative procedure.
- 2 In section 7 (power to grant licences) – 10
- (a) in subsection (1) for “economic regulator” substitute “Secretary of State”;
- (b) after subsection (2) insert –
- “(3) As soon as practicable after granting a licence, the Secretary of State must send a copy of the licence to the economic regulator.” 15
- 3 In section 9 (procedure for licence applications) –
- (a) in subsection (1), in the words before paragraph (a), for “Secretary of State, or the economic regulator with the approval of the Secretary of State,” substitute “Secretary of State”; 20
- (b) in subsection (4), for “economic regulator”, in each place it occurs, substitute “Secretary of State”;
- (c) for subsection (5) substitute –
- “(5) A notice under subsection (4) must be given by –
- (a) sending a copy of the notice to the economic regulator and any appropriate devolved authority, and 25
- (b) publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by the grant of the licence.” 30
- (d) after subsection (8) insert –
- “(8A) For the purposes of this section the “appropriate devolved authorities” are –
- (a) the Scottish Ministers, if provision granting the licence in question would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament; 35
- (b) the Welsh Ministers, if provision granting the licence in question would be within the legislative

- competence of Senedd Cymru if it were contained in an Act of the Senedd (ignoring any requirement for the consent of a Minister of the Crown imposed under Schedule 7B to the Government of Wales Act 2006); 5
- (c) the Department for the Economy in Northern Ireland, if provision granting the licence in question –
- (i) would be within the legislative competence of the Northern Ireland Assembly if it were contained in an Act of that Assembly, and 10
- (ii) would not, if it were contained in a Bill in the Northern Ireland Assembly, result in the Bill requiring the consent of the Secretary of State under section 8 of the Northern Ireland Act 1998.” 15
- 4 In section 12 (standard conditions of licences) –
- (a) in subsection (7)(b) omit “and the Secretary of State”;
- (b) omit subsection (9).

SCHEDULE 2

Section 21

PROCEDURE FOR APPEALS UNDER SECTION 20 20

Application for permission to bring appeal

- 1 (1) An application for permission to bring an appeal may be made –
- (a) only by sending a notice to the CMA requesting the permission, and
- (b) only by a person entitled under section 20 to bring the appeal if permission is granted. 25
- (2) Where the economic regulator publishes a decision to modify the conditions of any licence under section 13(8), any application for permission to appeal is not to be made after the end of 20 working days beginning with the first working day after the day on which the decision is published. 30
- (3) An application for permission to appeal must be accompanied by all such information as may be required by appeal rules.
- (4) Appeal rules may require information contained in an application for permission to appeal to be verified by a statement of truth.
- (5) A person who applies for permission to bring an appeal in accordance with this paragraph is referred to in this Schedule as the appellant. 35
- (6) The appellant must send the economic regulator –
- (a) a copy of the application for permission to appeal at the same time as it is sent to the CMA, and

- (b) such other information as may be required by appeal rules.
- (7) The CMA’s decision whether to grant permission to appeal is to be taken by an authorised member of the CMA.
- (8) Before the authorised member decides whether to grant permission under this paragraph, the economic regulator must be given an opportunity to make representations or observations, in accordance with paragraph 3(2). 5
- (9) The CMA’s decision on an application for permission must be made –
- (a) where the economic regulator makes representations or observations in accordance with paragraph 3(2), before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received; 10
- (b) in any other case, before the end of 14 working days beginning with the first working day after the day on which the application for permission is received.
- (10) The grant of permission may be made subject to conditions, which may include – 15
- (a) conditions which limit the matters that are to be considered on the appeal in question,
- (b) conditions for the purpose of expediting the determination of the appeal, and 20
- (c) conditions requiring that appeal to be considered together with other appeals (including appeals relating to different matters or decisions and appeals brought by different persons).
- (11) Where a decision is made to grant or to refuse an application for permission, an authorised member of the CMA must notify the decision, giving reasons – 25
- (a) to the appellant, and
- (b) to the economic regulator.
- (12) A decision of the CMA under this paragraph must be published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is made. 30
- (13) Section 25(2) applies to the publication of a decision under sub-paragraph (12) as it does to the publication of a decision under section 25.

Suspension of decision

- 2 (1) The CMA may direct that, pending the determination of an appeal against a decision of the economic regulator – 35
- (a) the decision is not to have effect, or
- (b) the decision is not to have effect to such extent as may be specified in the direction.
- (2) The power to give a direction under this paragraph is exercisable only where – 40

- (a) an application for its exercise has been made by the appellant at the same time that the appellant made an application (in accordance with paragraph 1) for permission to bring an appeal against a decision of the economic regulator;
 - (b) the economic regulator has been given an opportunity of making representations or observations, in accordance with paragraph 3(2); 5
 - (c) a person bringing the appeal who falls within section 20(2)(a) or (b) would incur significant costs if the decision were to have effect before the determination of the appeal, and
 - (d) the balance of convenience does not otherwise require effect to be given to the decision pending that determination. 10
- (3) The CMA’s decision on an application for a direction under this paragraph must be made –
- (a) where the economic regulator makes representations or observations in accordance with paragraph 3(2) before the end of 10 working days beginning with the first working day after the day on which those representations or observations are received; 15
 - (b) in any other case, before the end of 14 working days beginning with the first working day following the day on which the application under sub-paragraph (2)(a) is received. 20
- (4) The appellant must send the economic regulator a copy of the application for a direction under this paragraph at the same time as it is sent to the CMA.
- (5) The CMA’s decision whether to give a direction is to be taken by an authorised member of the CMA. 25
- (6) A direction under this paragraph must be –
- (a) given by an authorised member of the CMA, and
 - (b) published, in such manner as an authorised member of the CMA considers appropriate, as soon as reasonably practicable after it is given. 30
- (7) Section 25(2) applies to the publication of a direction under sub-paragraph (6) as it does to the publication of a decision under section 25.

Time limit for representations and observations by the economic regulator

- 3
- (1) Sub-paragraph (2) applies where the economic regulator wishes to make representations or observations to the CMA in relation to – 35
 - (a) an application for permission to bring an appeal under paragraph 1;
 - (b) an application for a direction under paragraph 2.
 - (2) The economic regulator must make the representations or observations in writing before the end of 10 working days beginning with the first working day after the day on which it received a copy of the application under paragraph 1(6) or 2(4) as the case may be. 40

- (3) Sub-paragraph (4) applies where an application for permission to bring an appeal has been granted and the economic regulator wishes to make representations or observations to the CMA in relation to—
- (a) the economic regulator’s reasons for the decision in relation to which the appeal is being brought, or 5
 - (b) any grounds on which that appeal is being brought against that decision.
- (4) The economic regulator must make the representations or observations in writing before the end of 15 working days beginning with the first working day after the day on which permission to bring the appeal was granted. 10
- (5) The economic regulator must send a copy of the representations and observations it makes under this paragraph to the appellant.

Determination of matter on appeal

- 4 (1) A group constituted by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 for the purpose of carrying out functions of the CMA with respect to an appeal under section 20 must consist of three members of the CMA panel. 15
- (2) A decision of the group is effective if, and only if—
- (a) all the members of the group are present when it is made, and
 - (b) at least two members of the group are in favour of the decision. 20

Matters to be considered on appeal

- 5 (1) The CMA, if it thinks it necessary to do so for the purpose of securing the determination of an appeal within the period provided for by section 24, may disregard—
- (a) any or all matters raised by an appellant that were not raised by that appellant at the time of the relevant application, and 25
 - (b) any or all matters raised by the economic regulator that were not contained in representations or observations made for the purposes of the appeal in accordance with paragraph 3.
- (2) In this paragraph “relevant application” means an application under paragraph 1 or 2. 30

Production of documents

- 6 (1) For the purposes of this Schedule, the CMA may by notice require—
- (a) a person to produce to the CMA the documents specified or otherwise identified in the notice; 35
 - (b) any person who carries on a business to supply to the CMA such estimates, forecasts, returns or other information as may be specified or described in the notice in relation to that business.

- (2) The power to require the production of a document, or the supply of any estimate, forecast, return or other information, is a power to require its production or, as the case may be, supply –
- (a) at the time and place specified in the notice, and
 - (b) in a legible form. 5
- (3) No person is to be compelled under this paragraph to produce a document or supply an estimate, forecast, return or other information that the person could not be compelled to produce in civil proceedings in the High Court or Court of Session.
- (4) An authorised member of the CMA may, for the purpose of the exercise of the functions of the CMA, make arrangements for copies to be taken of a document produced or an estimate, forecast, return or other information supplied under this paragraph. 10
- (5) A notice for the purposes of this paragraph –
- (a) may be issued on the CMA’s behalf by an authorised member of the CMA; 15
 - (b) must include information about the possible consequences of not complying with the notice (as set out in paragraph 10).

Oral hearings

- 7 (1) For the purposes of this Schedule an oral hearing may be held, and evidence may be taken on oath –
- (a) by a person considering an application for permission to bring an appeal under paragraph 1,
 - (b) by a person considering an application for a direction under paragraph 2, or 25
 - (c) by a group with the function of determining an appeal;
- and, for that purpose, such a person or group may administer oaths.
- (2) The CMA may by notice require a person –
- (a) to attend at a time and place specified in the notice, and
 - (b) at that time and place, to give evidence to a person or group mentioned in sub-paragraph (1). 30
- (3) At any oral hearing the person or group conducting the hearing may require –
- (a) the appellant, or the economic regulator, if present at the hearing to give evidence or to make representations or observations, or 35
 - (b) a person attending the hearing as a representative of the appellant or of the economic regulator to make representations or observations.
- (4) A person who gives oral evidence at the hearing may be cross-examined by or on behalf of any party to the appeal.
- (5) If the appellant, the economic regulator, or the economic regulator’s representative is not present at a hearing – 40

- (a) there is no requirement to give notice to that person under sub-paragraph (2), and
 - (b) the person or group conducting the hearing may determine the application or appeal without hearing that person’s evidence, representations or observations. 5
- (6) No person is to be compelled under this paragraph to give evidence which that person could not be compelled to give in civil proceedings in the High Court or Court of Session.
- (7) Where a person is required under this paragraph to attend at a place more than 10 miles from that person’s place of residence, an authorised member of the CMA must arrange for that person to be paid the necessary expenses of attendance. 10
- (8) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Written statements 15

- 8 (1) The CMA may by notice require a person to produce a written statement with respect to a matter specified in the notice to—
- (a) a person who is considering, or is to consider, an application for a direction under paragraph 2, or
 - (b) a group with the function of determining an appeal. 20
- (2) The power to require the production of a written statement includes power—
- (a) to specify the time and place at which it is to be produced, and
 - (b) to require it to be verified by a statement of truth, and a statement required to be so verified must be disregarded unless it is so verified. 25
- (3) No person is to be compelled under this paragraph to produce a written statement with respect to any matter about which that person could not be compelled to give evidence in civil proceedings in the High Court or Court of Session. 30
- (4) A notice for the purposes of this paragraph may be issued on the CMA’s behalf by an authorised member of the CMA.

Expert advice

- 9 Where permission to bring an appeal is granted under paragraph 1 the CMA may commission expert advice with respect to any matter raised by a party to that appeal. 35

Defaults in relation to evidence

- 10 (1) If a person (“the defaulter”)—
- (a) fails to comply with a notice issued or other requirement imposed under paragraph 6, 7 or 8, 40

- (b) in complying with a notice under paragraph 8, makes a statement that is false in any material particular, or
- (c) in providing information verified in accordance with a statement of truth required by appeal rules, provides information that is false in a material particular, 5
- an authorised member of the CMA may certify the failure, or the fact that such a false statement has been made or such false information has been given, to the High Court or the Court of Session.
- (2) The High Court or Court of Session may inquire into a matter certified to it under this paragraph, and if, after having heard— 10
- (a) any witness against or on behalf of the defaulter, and
- (b) any statement in that defaulter’s defence,
- it is satisfied that the defaulter did, without reasonable excuse, fail to comply with the notice or other requirement, or made the false statement, or gave the false information, that court may punish that defaulter as if the person had been guilty of contempt of court. 15
- (3) Where the High Court or Court of Session has power under this paragraph to punish a body corporate for contempt of court, it may so punish any director or other officer of that body (either instead of or as well as punishing the body). 20
- (4) A person who wilfully alters, suppresses or destroys a document which that person has been required to produce under paragraph 6 is guilty of an offence and is to be liable—
- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding the general limit in a magistrates’ court or a fine (or both); 25
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum (or both); 30
- (d) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine (or both).

Costs or expenses 35

- 11 (1) A group that determines an appeal must make an order requiring the payment to the CMA of the costs or expenses incurred by the CMA in connection with the appeal.
- (2) An order under sub-paragraph (1) must require those costs or expenses to be paid— 40
- (a) where the appeal is allowed in full, by the economic regulator;
- (b) where the appeal is dismissed in full, by the appellant;

- (c) where the appeal is partially allowed, by one or more parties in such proportions as the CMA considers appropriate in all the circumstances.
- (3) The group that determines an appeal may also make such order as it thinks fit for requiring a party to the appeal to make payments to another party in respect of costs or expenses reasonably incurred by that other party in connection with the appeal. 5
- (4) A person who is required by an order under this paragraph to pay a sum to another person must comply with the order before the end of 28 days beginning with the day after the making of the order. 10
- (5) Sums required to be paid by an order under this paragraph but not paid within the period mentioned in sub-paragraph (4) are to bear interest at such rate as may be determined in accordance with provision contained in the order.
- (6) Any costs or expenses payable by virtue of an order under this paragraph and any interest that has not been paid may be recovered as a civil debt by the person in whose favour that order is made. 15

Appeal rules

- 12 (1) The CMA Board may make rules of procedure regulating the conduct and disposal of appeals under section 20. 20
- (2) Those rules may include provision supplementing the provisions of this Schedule in relation to any application, notice, hearing, power or requirement for which this Schedule provides, and that provision may, in particular, impose time limits or other restrictions on—
- (a) the taking of evidence at an oral hearing, or 25
- (b) the making of representations or observations at such a hearing.
- (3) The CMA Board must publish rules made under this paragraph in such manner as it considers appropriate for the purpose of bringing them to the attention of those likely to be affected by them.
- (4) Before making rules under this paragraph, the CMA Board must consult such persons as it considers appropriate. 30
- (5) Rules under this paragraph may make different provision for different cases.

Interpretation of Schedule

- 13 (1) In this Schedule— 35
- “appeal” means an appeal under section 20;
- “appeal rules” means rules of procedure under paragraph 12;
- “authorised member of the CMA”—
- (a) in relation to a power exercisable in connection with an appeal in respect of which a group has been constituted by the chair of the CMA under Schedule 4 to the Enterprise 40

- and Regulatory Reform Act 2013, means a member of that group who has been authorised by the chair of the CMA to exercise that power;
- (b) in relation to a power exercisable in connection with an application for permission to bring an appeal, or otherwise in connection with an appeal in respect of which a group has not been so constituted by the chair of the CMA, means –
- (i) any member of the CMA Board who is also a member of the CMA panel, or
- (ii) any member of the CMA panel authorised by the Secretary of State (whether generally or specifically) to exercise the power in question;
- “CMA Board” and “CMA panel” have the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013;
- “statement of truth”, in relation to the production of a statement or provision of information by a person, means a statement that the person believes the facts stated in the statement or information to be true;
- “working day” means any day other than –
- (a) Saturday or Sunday;
- (b) Christmas Day or Good Friday;
- (c) a day which is a bank holiday in England and Wales or Scotland under the Banking and Financial Dealings Act 1971.
- (2) References in this Schedule to a party to an appeal are references to –
- (a) the appellant, or
- (b) the economic regulator.

SCHEDULE 3

Section 52

TRANSFER SCHEMES

Application and commencement of scheme

- 1 (1) A scheme may set out the property, rights and liabilities to be transferred in one or more of the following ways –
- (a) by specifying or describing them in particular;
- (b) by identifying them generally by reference to, or to a specified part of, an undertaking from which they are to be transferred; or
- (c) by specifying the manner in which they are to be determined.
- (2) A scheme comes into force on the date appointed by the scheme.

Property, rights and liabilities that may be transferred

- 2 (1) The property, rights and liabilities that may be transferred by a scheme include—
- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor; 5
 - (b) property acquired in the period after the making of the scheme and before it comes into force and rights and liabilities arising in that period;
 - (c) rights and liabilities arising after the scheme comes into force in respect of matters occurring before it comes into force; 10
 - (d) property situated in the United Kingdom, otherwise in a controlled place, or elsewhere;
 - (e) rights and liabilities under the law of a part of the United Kingdom or of a place outside the United Kingdom;
 - (f) rights and liabilities under an enactment or subordinate legislation. 15
- (2) The transfers to which effect may be given by a scheme include transfers that are to take effect in accordance with the scheme as if there were—
- (a) no such requirement to obtain a person's consent or concurrence,
 - (b) no such liability in respect of a contravention of any other requirement, and 20
 - (c) no such interference with any interest or right,
- as there would be, in the case of a transaction apart from this Act, by reason of a provision falling within sub-paragraph (3).
- (3) A provision falls within this sub-paragraph to the extent that it has effect (whether under an enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to anything to which the transfer relates. 25
- (4) Sub-paragraph (5) applies where (apart from that sub-paragraph) a person would be entitled, in consequence of anything done or likely to be done by or under this Act in connection with a scheme— 30
- (a) to terminate, modify, acquire or claim an interest or right to which the transferor is entitled or subject, or
 - (b) to treat such an interest or right as modified or terminated.
- (5) That entitlement is to be enforceable in relation to the interest or right— 35
- (a) in consequence of what is done or likely to be done by or under this Act, and
 - (b) in corresponding circumstances arising after the transfer,
- to the extent only that the scheme provides for it to be so enforceable.
- (6) Sub-paragraphs (2) to (5) have effect where shares in a subsidiary of the transferor are or are to be transferred— 40
- (a) as if the reference in sub-paragraph (3) to the terms on which the transferor is entitled or subject to anything to which the transfer relates included a reference to the terms on which the subsidiary

is entitled or subject to anything immediately before the transfer takes effect, and

- (b) as if the reference in sub-paragraph (4) to the transferor included a reference to the subsidiary.

Dividing and modifying transferor's property, rights and liabilities 5

- 3 (1) A scheme may contain provision—
- (a) for the creation, in favour of a transferor or transferee, of an interest or right in or in relation to property to be transferred in accordance with the scheme;
 - (b) for giving effect to a transfer to a person by the creation, in favour of that person, of an interest or right in or in relation to property to be retained by a transferor; 10
 - (c) for the creation of new rights and liabilities (including rights of indemnity and duties to indemnify) as between different transferees and as between a transferee and a transferor. 15
- (2) A scheme may contain provision for the creation of rights and liabilities for the purpose of converting arrangements between different parts of a transferor's undertaking which exist immediately before the coming into force of the scheme into a contract between different transferees, or between a transferee and a transferor. 20
- (3) A scheme may contain provision—
- (a) for rights and liabilities to be transferred so as to be enforceable by or against more than one transferee, or by or against both the transferee and the transferor, and
 - (b) for rights and liabilities enforceable against more than one person in accordance with provision falling within paragraph (a) to be enforceable in different or modified respects by or against each or any of them. 25
- (4) A scheme may contain provision for interests, rights or liabilities of third parties in relation to anything to which the scheme relates to be modified in the manner set out in the scheme. 30
- (5) In sub-paragraph (4) “third party”, in relation to a scheme, means a person other than the transferor and the transferee.
- (6) Paragraph 2(2) and (3) applies to the creation of interests and rights in accordance with a scheme as it applies to the transfer of interests and rights. 35

Obligation to effect transfers etc. under a scheme

- 4 (1) A scheme may contain provision for imposing on a transferee or a transferor an obligation—
- (a) to enter into such agreements with another person on whom a corresponding obligation is, or could be or has been, imposed by virtue of this paragraph (whether in the same or a different scheme), or 40

- (b) to execute such instruments in favour of any such person, as may be specified or described in the scheme.
- (2) An obligation imposed on a person by virtue of sub-paragraph (1) is enforceable by the relevant person in civil proceedings—
- (a) for an injunction, 5
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.
- (3) The relevant person for the purposes of sub-paragraph (2) is the person with, or in favour of whom, the agreement or instrument is to be entered into or executed. 10

Transfer of licences and permits

- 5 (1) A scheme may include provision to transfer any licence or permit held by the transferor from the transferor to the transferee.
- (2) Such a transfer may relate to the whole or any part of the licence or permit. 15
- (3) Where such a transfer relates to a part of the licence or permit, the provision made under sub-paragraph (1) may include—
- (a) provision apportioning responsibility between the transferor and the transferee in relation to—
 - (i) the making of payments required by conditions included in the licence or (as the case may be) permit, 20
 - (ii) ensuring compliance with any other requirements of the conditions included in the licence or (as the case may be) permit, and
 - (b) provision making incidental modifications to the terms and conditions of the licence or permit. 25
- (4) References in this paragraph to a part of a licence or permit are references to one or both of—
- (a) a part of the activities authorised by the licence or (as the case may be) permit; 30
 - (b) a part of the area in relation to which the holder of the licence or (as the case may be) permit is authorised to carry on those activities.

Powers and duties under statutory provisions

- 6 (1) A scheme may contain provision for some or all of the powers and duties to which this paragraph applies— 35
- (a) to be transferred to the transferee,
 - (b) to become powers and duties that are exercisable, or must be performed, concurrently by two or more transferees, or
 - (c) to become powers and duties that are exercisable, or must be performed, concurrently by a transferor and a transferee. 40

- (2) Provision falling within sub-paragraph (1) may apply to powers and duties only in so far as they are exercisable or required to be performed in the area specified or described in the provision.
- (3) The powers and duties to which this paragraph applies are the powers and duties conferred or imposed upon the transferor by or under an enactment, 5
so far as those powers and duties are connected with—
- (a) the undertaking of the transferor to the extent the scheme relates to that undertaking, or
 - (b) any property, rights or liabilities to be transferred in accordance with the scheme. 10
- (4) The powers and duties mentioned in sub-paragraph (3) include, in particular, powers and duties relating to the carrying out of works or the acquisition of land.

Effect of scheme

- 7 (1) Where a scheme provides for the transfer of property, rights or liabilities, 15
or for the creation of interests, rights or liabilities—
- (a) this Act has the effect that, at the time when the scheme comes into force, the property or interests, rights or liabilities vest, without further assurance, in the transferee, and
 - (b) the provisions of that scheme in relation to that property or those 20
interests, rights or liabilities have effect from that time.
- (2) Sub-paragraph (1) is subject to so much of a scheme as provides for—
- (a) the transfer of property, rights or liabilities which are to be transferred in accordance with the scheme, or
 - (b) the creation of interests, rights and liabilities which are to be created 25
in accordance with the scheme,
- to be effected by or under an agreement or instrument entered into or executed in pursuance of an obligation imposed by virtue of paragraph 4(1).
- (3) In its application to Scotland, sub-paragraph (1) has effect with the omission 30
of the words “without further assurance”.

Supplementary provisions of schemes

- 8 (1) A scheme may—
- (a) make incidental, supplemental, consequential and transitional provision in connection with the other provisions of the scheme; 35
 - (b) make different provision for different purposes.
- (2) In particular, a scheme may make provision, in relation to transfers in accordance with the scheme—
- (a) for the transferee to be treated as the same person in law as the transferor; 40

- (b) for agreements made, transactions effected or other things done by or in relation to the transferor to be treated, so far as may be necessary for the purposes of or in connection with the transfers, as made, effected or done by or in relation to the transferee;
- (c) for references in an agreement, instrument or other document to the transferor, or to an employee or office holder of the transferor, to have effect, so far as may be necessary for the purposes of or in connection with a transfer, with such modifications as are specified in the scheme; 5
- (d) that the effect of any transfer in accordance with the scheme in relation to contracts of employment with the transferor is not to terminate any of those contracts but is to be that periods of employment with the transferor are to count for all purposes as periods of employment with the transferee; 10
- (e) for proceedings commenced by or against the transferor to be continued by or against the transferee. 15
- (3) Sub-paragraph (2)(c) does not apply to references in an enactment or in subordinate legislation.
- (4) A scheme may make provision for disputes as to the effect of the scheme between the transferor and the transferee to be referred to such arbitration as may be specified in or determined under the scheme. 20
- (5) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in England and Wales, or to the management of such land or other property –
- (a) the scheme may provide for that person to be treated as having given another person an acknowledgement in writing of the right of that other person to production of the document and to delivery of copies of it, and 25
- (b) section 64 of the Law of Property Act 1925 (production and safe custody of documents) is to have effect accordingly, and on the basis that the acknowledgement did not contain an expression of contrary intention. 30
- (6) Where a person is entitled, in consequence of a scheme, to possession of a document relating in part to the title to land or other property in Scotland or to the management of such land or other property, subsection (1) of section 16 of the Land Registration (Scotland) Act 1979 (omission of certain clauses in deeds) is to have effect in relation to the transfer – 35
- (a) as if the transfer had been effected by deed, and
- (b) as if the words “unless specially qualified” were omitted from that subsection. 40
- (7) In this paragraph references to a transfer in accordance with a scheme include references to the creation in accordance with such a scheme of an interest, right or liability.

Modification of scheme

- 9 (1) The Secretary of State may modify a scheme.
- (2) A modification may be made only for the purpose of achieving the objective with which the scheme was made (see section 50(2)).
- (3) If a transfer under the scheme has taken effect, a modification under sub-paragraph (1) may be made only with the agreement of—
- (a) the transferor or transferee affected by the modification (or, where both the transferor and transferee are affected, with the agreement of both of them);
 - (b) any employee who is a party to a contract of employment containing rights and liabilities to which the modification relates; 10
 - (c) any other person whose property or rights have been adversely affected by the modification.
- (4) A modification takes effect from such date as the Secretary of State may specify (which may be the date when the original scheme came into effect). 15

Compensation for third parties

- 10 (1) Where—
- (a) an entitlement of a third party to an interest or right would, apart from a provision of a scheme under paragraph 2(4) and (5), become enforceable in respect of the transfer or creation in accordance with such a scheme of any property, rights or liabilities, 20
 - (b) the provisions of that scheme or of paragraph 2(4) and (5) have the effect of preventing the third party’s entitlement to that interest or right from being enforced in respect of anything for which the scheme provides, and 25
 - (c) provision is not made by the scheme for securing that an entitlement to that interest or right, or to an equivalent interest or right, is preserved or created so as to arise and be enforceable in respect of the first occasion when corresponding circumstances next occur after the coming into force of the transfers for which the scheme provides, 30
- the third party is entitled to compensation in respect of the extinguishment of the third party’s entitlement.
- (2) The amount of compensation to which a third party is entitled under this paragraph is the amount necessary for securing, to the extent that it is just to do so, that the third party does not suffer financial loss from the extinguishment of the entitlement. 35
- (3) A liability to pay compensation under this paragraph falls on the Secretary of State.
- (4) In the preceding provisions of this paragraph “third party”, in relation to a scheme, means a person other than the transferor and the transferee. 40

- (5) This paragraph has effect in relation to the provisions of an agreement or instrument entered into or executed in pursuance of an obligation imposed by a scheme as it has effect in relation to the scheme.

Provision relating to foreign property etc

- 11 (1) Where there is a transfer in accordance with a scheme of— 5
- (a) any foreign property, or
 - (b) a foreign right or liability,
- the transferor and the transferee must each take all requisite steps to secure that the vesting of the foreign property, right or liability in the transferee is effective under the relevant foreign law. 10
- (2) Until the vesting of the foreign property, right or liability in the transferee in accordance with the scheme is effective under the relevant foreign law, the transferor must—
- (a) hold the property or right for the benefit of the transferee, or
 - (b) discharge the liability on behalf of the transferor. 15
- (3) The transferor must comply with any directions given to it by the transferee in relation to the performance of the obligations under sub-paragraphs (1) and (2) of the transferor.
- (4) Nothing in sub-paragraphs (1) to (3) prejudices the effect under the law of a part of the United Kingdom of the vesting of any foreign property, right or liability in the transferee in accordance with a scheme. 20
- (5) Where—
- (a) any foreign property, right or liability is acquired or incurred in respect of any other property, right or liability by a person, and
 - (b) by virtue of this paragraph, the person holds the other property or right for the benefit of the transferee or is required to discharge the liability on behalf of the transferee, 25
- the property, right or liability acquired or incurred immediately becomes the property, right or liability of the transferee.
- (6) The provisions of sub-paragraphs (1) to (5) have effect in relation to foreign property, rights or liabilities transferred to the transferee under sub-paragraph (5) as they have effect in the case of property, rights and liabilities transferred in accordance with a scheme. 30
- (7) References in this paragraph to foreign property, or to a foreign right or liability, are references to any property, right or liability as respects which an issue arising in any proceedings would be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom. 35
- (8) Expenses incurred under this paragraph by a person as the person from which anything is transferred are to be met by the transferee. 40

- (9) An obligation imposed under this paragraph in relation to property, rights or liabilities is to be enforceable as if contained in a contract between the transferor and the transferee.

Provision of information to Secretary of State

- 12 (1) If the Secretary of State proposes to make a scheme, the Secretary of State may direct— 5
- (a) a proposed transferor, or
 - (b) a proposed transferee,
- to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to make the scheme. 10
- (2) If the Secretary of State proposes to modify a scheme, the Secretary of State may direct—
- (a) a transferor, or
 - (b) a transferee, 15
- to provide the Secretary of State with such information as the Secretary of State considers necessary to enable the Secretary of State to modify the scheme.
- (3) A direction under sub-paragraph (1) or (2) must specify the period within which the information is to be provided. 20
- (4) The period specified in the direction must be not less than 28 days beginning with the day of the giving of the direction.
- (5) If a person fails to comply with such a direction, the Secretary of State may serve a notice on the person requiring the person—
- (a) to produce to the Secretary of State any documents which are specified or described in the notice and are in the person’s custody or under the person’s control, or 25
 - (b) to provide to the Secretary of State such information as may be specified or described in the notice.
- (6) Documents or information to be produced or provided in accordance with such a notice must be produced or provided at the time and place, and in the form and manner, specified in the notice. 30
- (7) No person may be required under this paragraph—
- (a) to produce a document which the person could not be compelled to produce in civil proceedings in the court, or 35
 - (b) to provide information which the person could not be compelled to give in evidence in such proceedings.
- (8) A person who intentionally alters, suppresses or destroys a document which the person has been required to produce by a notice under sub-paragraph (5) is guilty of an offence and liable— 40
- (a) on summary conviction, to a fine not exceeding the statutory maximum, and

- (b) on conviction on indictment, to a fine.
- (9) If a person fails to comply with a notice under sub-paragraph (5), the court may, on the application of the Secretary of State, make such order as the court thinks fit for requiring the failure to be made good.
- (10) Any order under sub-paragraph (9) may include provision requiring all the costs or expenses of and incidental to the application to be borne by one or more of the following – 5
- (a) the person in default;
 - (b) any officers of a company or other association who are responsible for its default. 10
- (11) In this paragraph –
- (a) a reference to the production of a document includes a reference to the production of a legible and intelligible copy of information recorded otherwise than in legible form, and
 - (b) the reference to suppressing a document includes a reference to destroying the means of reproducing information recorded otherwise than in legible form. 15
- (12) In this paragraph “the court” means –
- (a) in England and Wales, the High Court;
 - (b) in Scotland, the Court of Session; 20
 - (c) in Northern Ireland, the High Court.

Interpretation

- 13 (1) In this Schedule –
- “controlled place” has the meaning given by section 17(3) to (4) of the Energy Act 2008; 25
 - “scheme” means a scheme under section 50;
 - “subsidiary” has the meaning given to it by section 1159 of the Companies Act 2006;
 - “transferee” –
 - (a) in relation to a scheme, means a person to whom property, rights or liabilities are transferred in accordance with the scheme; and 30
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means the person to whom that property or those rights or liabilities are transferred or in whose favour, or in relation to whom, they are created; 35 - “transferor” –
 - (a) in relation to a scheme, means the person from whom property, rights or liabilities are transferred in accordance with the scheme; and 40
 - (b) in relation to particular property, rights or liabilities transferred or created in accordance with a scheme, means

the person from whom that property or those rights or liabilities are transferred or the person who or whose property is subject to the interest or right created by the scheme or for whose benefit the liability is created.

- (2) References in this Schedule to a right or to an entitlement to a right include references to an entitlement to exercise a right; and, accordingly, references to a right’s arising include references to its becoming exercisable. 5

SCHEDULE 4

Section 54

AMENDMENTS RELATED TO PART 1

Utilities Act 2000 10

- 1 The Utilities Act 2000 is amended as follows.
- 2 In section 4 (forward work programmes), at the end insert –
- “(7) In this section –
- (a) references to functions do not include functions under Part 1 of the Energy Act 2022, and 15
 - (b) references to projects do not include projects with regard to the exercise of such functions.”
- 3 In section 5 (annual and other reports of Authority), after subsection (10) insert –
- “(11) In this section – 20
- (a) references to functions of the Authority do not include functions under Part 1 of the Energy Act 2022;
 - (b) references to activities of the Authority do not include activities in the exercise of such functions;
 - (c) the reference in subsection (1) to “references made by the Authority” does not include references made by virtue of section 36(1) of the Energy Act 2022.” 25
- 4 In section 5XA (laying of accounts before Scottish Parliament and Welsh Assembly) –
- (a) in the heading, for “and Welsh Assembly” substitute “, Senedd Cymru or the Northern Ireland Assembly”; 30
 - (b) after subsection (2) insert –
- “(2A) The Authority must send to the Department for the Economy in Northern Ireland, in respect of each of its accounting years, a copy of the certified accounts and report of the Authority no later than 31 January of the financial year following that to which the accounts relate.”; 35

- (c) after subsection (3A) insert—
- “(3B) The Department for the Economy in Northern Ireland must lay a copy of whatever is sent to it under subsection (2A) before the Northern Ireland Assembly.”;
- (d) for subsection (4) substitute— 5
- “(4) In subsections (1) to (3) “certified accounts and report” means those accounts certified under sections 5 and 7 of the Government Resources and Accounts Act 2000, and the report issued by the Comptroller and Auditor General under section 6(3)(a) of that Act.” 10
- 5 In section 105 (general restrictions on disclosure of information) —
- (a) in subsection (1)(a), after “Nuclear Energy (Financing) Act 2022” insert “or Part 1 of the Energy Act 2022”;
- (b) in subsection (3), after paragraph (azc) insert—
- “(azd) it is made for the purpose of facilitating the performance of any functions of the Authority under or by virtue of Part 1 of the Energy Act 2022;” 15
- (c) in subsection (6), at the end insert —
- “(z1) Part 1 of the Energy Act 2022.”
- Enterprise Act 2002* 20
- 6 The Enterprise Act 2002 is amended as follows.
- 7 In section 136 (investigations and reports on market investigation references), in subsection (7)(b), for the words from “or” to the end substitute “, section 43 of the Electricity Act 1989 or (as the case may be) section 36 of the Energy Act 2022;”. 25
- 8 (1) Section 168 (regulated markets) is amended as follows.
- (2) In subsection (3) (meaning of “relevant action”) —
- (a) omit “or” at the end of paragraph (p);
- (b) after paragraph (q) insert “; or
- (r) modifying the conditions of a licence granted under section 7 of the Energy Act 2022.” 30
- (3) In subsection (4) (meaning of “relevant statutory functions”) —
- (a) omit “and” at the end of paragraph (r);
- (b) after paragraph (s) insert “, and
- (t) in relation to a licence granted under section 7 of the Energy Act 2022, the objectives and duties of the Gas and Electricity Markets Authority under section 1 of that Act.” 35
- (4) In subsection (6) —
- (a) for “or section 6” substitute “, section 6”; 40

- (b) before “would” insert “or section 7 of the Energy Act 2022”.

SCHEDULE 5

Section 92

CARBON DIOXIDE STORAGE LICENCES: LICENCE PROVISIONS

In the Storage of Carbon Dioxide (Licensing etc.) Regulations 2010 (S.I. 2010/2221),
in Schedule 1 (provisions to be included in a licence), after paragraph 5 insert— 5

“6 Change in control of licence holder

- (1) This paragraph applies if—
- (a) the licence holder is a company, or
 - (b) where two or more persons are joint licence holders, any of those persons is a company, 10
- and references in this paragraph to a company are to such a company.
- (2) A change in control of a company is not permitted without the consent of the authority.
- (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company. 15
- (4) If a change in control of a company is contemplated, the company must apply in writing to the authority for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
- (5) The authority may—
- (a) consent to the change in control unconditionally, 20
 - (b) consent to the change in control subject to conditions, or
 - (c) refuse consent to the change in control.
- (6) If the authority proposes to grant consent subject to any condition or to refuse consent, the authority must, before making a final decision—
- (a) give the company an opportunity to make representations, and 25
 - (b) consider any representations that are made.
- (7) The general rule is that the authority must decide an application within three months of receiving it, but the authority may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in sub-paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include— 30
- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
 - (b) conditions relating to the performance of activities permitted by the licence, and 35
 - (c) financial conditions.

- (9) The authority’s decision on the application, and any conditions as mentioned in sub-paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this paragraph “the interested parties” means –
- (a) the company,
 - (b) the person who (if consent were granted) would take control of the company, and 5
 - (c) if the company is a joint licence holder with another person or other persons, that other person or those other persons.
- (11) For the purposes of this paragraph, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, but read as if – 10
- (a) for the words “the greater part” wherever they occur in section 450(3), there were substituted “one-third or more”,
 - (b) in section 451(4) and (5), for “may” there were substituted “must”, and 15
 - (c) in section 451(4) and (5), any reference to an associate of a person included only –
 - (i) a relative (as defined in section 448(2) of that Act) of the person,
 - (ii) a partner of the person, and
 - (iii) a trustee of a settlement (as defined in section 620 of the Income Tax (Trading and Other Income) Act 2005) of which the person is a beneficiary. 20
- 7 Revocation of licence re change in control**
- (1) This paragraph applies in connection with a change in control of a licence holder which is a company (see paragraph 6). 25
- (2) In the event of –
- (a) any breach or non-observance by the company of any of the terms of paragraph 6,
 - (b) any breach of a condition (imposed in accordance with paragraph 6) subject to which the authority gave its consent to a change in control of the company, or 30
 - (c) any failure to provide full and accurate information in response to a notice given by the authority to the company under section 29A, the authority may, by giving the company and any joint licence holders notice in writing, revoke the licence with effect from the date specified in the notice. 35
- 8 Partial revocation of licence re change in control**
- (1) This paragraph applies if two or more persons are joint licence holders and any of them is a company.
- (2) If an event mentioned in paragraph 7(2)(a), (b) or (c) occurs in connection with a change in control of the company, the authority may exercise the 40

power in paragraph 7 to revoke the licence in so far as it applies to that company (without revoking it in so far as it applies to the other person or persons who are joint licence holders).”

SCHEDULE 6

Section 125

INDEPENDENT SYSTEM OPERATOR AND PLANNER: TRANSFERS

5

PART 1

TRANSFER SCHEMES

Power to make a transfer scheme

- 1 (1) The Secretary of State may make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person— 10
 - (a) in preparation for or in connection with the designation of a person under section 113(1), or
 - (b) for the purpose of enabling the ISOP to carry out any of its functions.
- (2) The Secretary of State may, during the period of 7 years beginning with the day on which this Act is passed, make one or more schemes for the transfer of designated property, rights or liabilities from one person to another person in connection with the operation or management of— 15
 - (a) a document maintained in accordance with the conditions of a relevant licence, or 20
 - (b) an agreement that gives effect to a document so maintained.
- (3) In this Schedule
 - (a) “transfer scheme” means a scheme under either or both of sub-paragraphs (1) and (2);
 - (b) “transferor”, in relation to a transfer scheme, means a person from whom property, rights or liabilities are or are to be transferred under the scheme; 25
 - (c) “transferee”, in relation to a transfer scheme, means a person to whom property, rights or liabilities are or are to be transferred under the scheme. 30
- (4) In this Part of this Schedule—
 - (a) “designated”, in relation to a transfer scheme, means specified in or determined in accordance with the scheme;
 - (b) “the TUPE regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246); 35
 - (c) references to property are to property situated in the United Kingdom or elsewhere;
 - (d) references to the transfer of property include the grant of a lease;

- (e) references to rights and liabilities –
 - (i) are references to rights and liabilities of any kind, arising (in any way or at any time) under the law of a part of Great Britain or of a place outside Great Britain;
 - (ii) include rights and liabilities arising under or by virtue of an enactment. 5

Consultation

- 2 (1) Before making a transfer scheme, the Secretary of State must consult –
 - (a) the transferor (or, if there is more than one transferor, the transferors), and 10
 - (b) such other persons as the Secretary of State considers appropriate.
- (2) Sub-paragraph (1) may be satisfied by consultation before the passing of this Act (as well as by consultation after that time).

Transfer of property, rights and liabilities

- 3 (1) The transfer of designated property, rights and liabilities under a transfer scheme takes effect on the date (or dates) specified in or determined in accordance with the scheme. 15
- (2) Sub-paragraph (1) has effect notwithstanding any provision (whether under an enactment or agreement or otherwise) that would otherwise prevent or restrict the transfer. 20
- (3) The things that may be transferred under a transfer scheme include –
 - (a) rights, powers, duties and liabilities under or in connection with a contract of employment (see paragraph 4);
 - (b) property, rights and liabilities that could not otherwise be transferred; 25
 - (c) property acquired, and rights and liabilities arising, after the making of the scheme;
 - (d) criminal liabilities.
- 4 (1) This paragraph applies where, under a transfer scheme, an employee to whom the scheme applies becomes an employee of a transferee. 30
- (2) The transfer scheme may apply to –
 - (a) all persons who are employees of a transferor,
 - (b) such descriptions of a transferor’s employees as the scheme may specify, or
 - (c) such employees of a transferor as the scheme may specify. 35
- (3) The transfer scheme may include provision –
 - (a) that has the same or similar effect as the TUPE regulations (so far as those regulations do not apply to any extent in relation to the transfer);

- (b) about the pension entitlements of the employee enjoyed immediately before the transfer.
- (4) The transfer scheme must contain provision enabling an employee to whom the scheme applies to object to the transfer before the relevant time, including provision as to how such an objection is to be made and as to the consequences of it. 5
- (5) The transfer scheme may provide that a person who is assigned to work for a transferor (whether on secondment or otherwise and whether or not on a full-time basis), but who does not have a contract of employment with the transferor, is to be treated for the purposes of any provision of the scheme as an employee of the transferor. 10
- (6) The transfer scheme may provide that a collective agreement that, immediately before the relevant time, had effect in relation to an employee’s employment with a transferor is to have effect on and after the relevant time in relation to the employee’s employment with a transferee. 15
- (7) In this paragraph—
“collective agreement” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992 (see section 178(1) of that Act);
“employee” has the same meaning as in the TUPE regulations (see regulation 2(1) of the regulations); 20
“the relevant time” means the time at which the transfer of the person’s employment takes effect in accordance with the transfer scheme.
- 5 (1) A transfer scheme may make provision requiring a transferor to provide such co-operation to a transferee as the transferee may reasonably require in connection with the implementation of the scheme. 25
- (2) The co-operation that may be required by virtue of sub-paragraph (1) includes, in particular, co-operation in relation to—
(a) the provision of information;
(b) consultation with representatives of employees transferred by the scheme. 30
- 6 (1) A transfer scheme may make supplementary, incidental, transitional or consequential provision and may in particular—
(a) create rights, or impose liabilities, in relation to property or rights transferred; 35
(b) make provision about the continuing effect of things done by a transferor in respect of anything transferred;
(c) make provision about the continuation of things (including legal proceedings) in the process of being done by, on behalf of, or in relation to, a transferor in respect of anything transferred; 40
(d) make provision for references to a transferor in any instrument or other document in respect of anything transferred to be treated as references to the transferee;

-
- (e) prevent a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer;
 - (f) dispense with any formality in relation to the transfer of anything by the scheme; 5
 - (g) make provision for the shared ownership or use of property;
 - (h) require a transferor, an associate of a transferor, or a transferee, to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (2) Sub-paragraph (1)(d) does not apply to references in – 10
- (a) primary legislation,
 - (b) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act), or
 - (c) an instrument made under an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation. 15
- (3) A certificate issued by the Secretary of State to the effect that any property, interest, right or liability transferred in accordance with a transfer scheme to a person specified in the certificate at a time so specified is conclusive evidence of the matters so specified.
- (4) In this paragraph – 20
- “associate” has the meaning given by section 1152 of the Companies Act 2006;
 - “primary legislation” means –
 - (a) an Act,
 - (b) an Act of the Scottish Parliament, 25
 - (c) an Act or Measure of Senedd Cymru, or
 - (d) Northern Ireland legislation.
- 7 A transfer scheme may –
- (a) make different provision for different purposes;
 - (b) make provision subject to exceptions. 30

Compensation

- 8 (1) A transfer scheme may provide for a transferor to be entitled to compensation from the Secretary of State, in accordance with provision made by or under the scheme, to the extent that the scheme makes provision – 35
- (a) in preparation for or in connection with the first designation of a person under section 113(1), or
 - (b) for the purpose of facilitating the carrying on by the ISOP of any of its functions.
- (2) Where a transferor is entitled to compensation by virtue of sub-paragraph (1), the amount of compensation is to be the amount – 40
- (a) agreed by the Secretary of State and the transferor, or

- (b) in the absence of such agreement, determined by an independent valuer appointed by the Secretary of State and the transferor.
- (3) For the purposes of sub-paragraph (2) an independent valuer must be appointed –
 - (a) by the Secretary of State and the transferor, or 5
 - (b) in the absence of such agreement, by the Secretary of State on behalf of both the Secretary of State and the transferor.
- (4) References in sub-paragraph (2) to the Secretary of State include references to a person nominated by the Secretary of State.
- (5) The Secretary of State may by regulations make provision – 10
 - (a) for determining when there is an absence of agreement for the purposes of sub-paragraph (2)(b) or (3)(b);
 - (b) about the procedure to be followed by an independent valuer in making a determination for the purposes of sub-paragraph (2)(b) (“a compensation determination”); 15
 - (c) specifying matters to which an independent valuer must have regard, or assumptions that an independent valuer must apply, in making a compensation determination;
 - (d) for an independent valuer to require the Secretary of State or the transferor to provide such information to the independent valuer as the independent valuer reasonably requires for the purposes of making a compensation determination; 20
 - (e) for an independent valuer’s determination to be binding on the Secretary of State and the transferor for the period specified in or determined under the regulations; 25
 - (f) about remuneration and expenses of an independent valuer;
 - (g) about enforcement of requirements imposed by the regulations.
- (6) Regulations under sub-paragraph (5) may confer a discretion on a person.

Taxation

- 9 (1) The Treasury may by regulations make provision varying the way in which a relevant tax has effect in relation to – 30
 - (a) anything transferred, acquired or disposed of under a transfer scheme, or
 - (b) anything done for the purposes of, or in relation to, a transfer under a transfer scheme. 35
- (2) The provision that may be made under sub-paragraph (1)(a) includes, in particular, provision for –
 - (a) a tax provision not to apply, or to apply with modifications, in relation to anything transferred;
 - (b) anything transferred to be treated in a specified way for the purposes of a tax provision; 40

- (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything transferred.
- (3) The provision that may be made under sub-paragraph (1)(b) includes, in particular, provision for – 5
- (a) a tax provision not to apply, or to apply with modifications, in relation to anything done for the purposes of, or in relation to, the transfer;
- (b) anything done for the purposes of, or in relation to, the transfer to have or not have a specified consequence or be treated in a specified way; 10
- (c) the Secretary of State to be required or permitted to determine, or to specify the method for determining, anything that needs to be determined for the purposes of any tax provision so far as relating to anything done for the purposes of, or in relation to, the transfer. 15
- (4) In this paragraph –
- “relevant tax” means income tax, corporation tax, capital gains tax, stamp duty, stamp duty reserve tax, stamp duty land tax, land and buildings transaction tax, land transaction tax or value added tax; 20
- “tax provision” means any provision –
- (a) about a relevant tax, and
- (b) made by an enactment.

Power to amend transfer scheme

- 10 (1) The Secretary of State may amend a transfer scheme if the Secretary of State considers that the amendment is appropriate – 25
- (a) in preparation for or in connection with the designation of a person under section 113(1),
- (b) for the purpose of enabling the ISOP to carry out any of its functions, or 30
- (c) for the purpose of enabling a transferor to carry out any of its functions.
- (2) The power under sub-paragraph (1) is not exercisable in relation to a transfer scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect. 35
- (3) Paragraphs 2 to 7 apply in relation to the amendment of a transfer scheme as they apply in relation to a transfer scheme.
- (4) A transfer scheme may provide for a transferor or transferee under the scheme to be entitled to compensation in consequence of the amendment of the scheme. 40
- (5) Paragraph 8(2) to (6) applies (with any necessary modifications) in relation to an entitlement to compensation under sub-paragraph (4) as it applies in relation to an entitlement to compensation under paragraph 8(1).

National Security and Investment Act 2021

- 11 The making of a transfer scheme is not a trigger event for the purposes of the National Security and Investment Act 2021.

PART 2

OTHER PROVISION ABOUT TRANSFERS AND DESIGNATION

5

Provision of information or assistance

- 12 (1) The Secretary of State may direct a person within sub-paragraph (2) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require –
- (a) in preparation for or in connection with the designation of a person under section 113(1), or
 - (b) in connection with the making of a transfer scheme.
- (2) A person is within this sub-paragraph if –
- (a) property, rights or liabilities are likely to be transferred from or to the person by a transfer scheme, or
 - (b) the person is a body corporate that is likely to be transferred under a transfer scheme.
- (3) The Secretary of State may direct a person (other than a person within sub-paragraph (2)) to provide the Secretary of State with such specified information or assistance as the Secretary of State may reasonably require in preparation for or in connection with the designation of a person under section 113(1).
- (4) A direction under sub-paragraph (1) or (3) must –
- (a) be in writing, and
 - (b) specify the sub-paragraph under which it is given.
- (5) The power to give a direction under sub-paragraph (3) ceases to be exercisable –
- (a) at the end of the period of 3 years beginning with the time from which the first designation under section 113(1) has effect, or
 - (b) if at any time before the end of that period a transfer scheme is made under paragraph 1(1), at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect.
- (6) A person to whom a direction is given under sub-paragraph (1) or (3) must, so far as reasonably practicable, provide the Secretary of State with the specified information or assistance –
- (a) within the specified period, and
 - (b) in the specified form and manner.

-
- (7) A direction under sub-paragraph (1) or (3) is enforceable by the Secretary of State in civil proceedings –
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or 5
 - (c) for any other appropriate remedy or relief.
- (8) The Secretary of State –
- (a) must reimburse a person in respect of costs reasonably incurred by the person in complying with a direction under sub-paragraph (1) or (3); 10
 - (b) may reimburse a person in respect of costs reasonably incurred by the person in complying with a request (whether made before or after the day on which this Act is passed) to provide the Secretary of State with information reasonably required by the Secretary of State for a purpose mentioned in sub-paragraph (1)(a) or (b). 15
- (9) In this paragraph –
- “assistance” includes assistance provided in a country or territory other than the United Kingdom;
 - “information” includes documents;
 - “specified” means specified in the direction. 20

Co-operation

- 13 (1) A person within sub-paragraph (2) must co-operate with, and so far as practicable must not take any step that may reasonably be expected to impede, the Secretary of State in relation to the doing of anything by the Secretary of State – 25
- (a) in preparation for or in connection with the first designation of a person under section 113(1), or
 - (b) in connection with the making of a transfer scheme.
- (2) The persons within this sub-paragraph are –
- (a) National Grid plc and its associates (within the meaning of section 1152 of the Companies Act 2006); 30
 - (b) any person who, at any time during the period mentioned in sub-paragraph (3), has acquired property, rights or liabilities from a person within paragraph (a) (whether or not as a result of a transfer scheme under paragraph 1). 35
- (3) The period mentioned in sub-paragraph (2)(b) is the period beginning on 20 July 2021 and ending with the first designation of a person under section 113(1).

Reimbursement and compensation: further provision

- 14 (1) The Secretary of State may reimburse a person in respect of expenditure reasonably incurred by the person – 40

- (a) in preparation for or in connection with the designation of a person under section 113(1), or
 - (b) in connection with the making of a transfer scheme.
- (2) The Secretary of State may make regulations providing for the payment of compensation by the Secretary of State to a person (other than the transferor in relation to a transfer scheme) who has suffered loss or damage in consequence of anything done by the Secretary of State in preparation for or in connection with the designation of a person under section 113(1). 5

SCHEDULE 7

Section 126

INDEPENDENT SYSTEM OPERATOR AND PLANNER: PENSIONS 10

Introductory

- 1 (1) In this Schedule –
- “active member” has the same meaning as in section 124(1) of the Pensions Act 1995;
 - “associate” has the same meaning as in section 1152 of the Companies Act 2006; 15
 - “member” has the same meaning as in section 124(1) of the Pensions Act 1995;
 - “prescribed” means prescribed by regulations made by the Secretary of State; 20
 - “qualifying accrued rights” means –
 - (a) any right which, at the relevant time, has accrued to or in respect of a qualifying member of a qualifying pension scheme to future benefits under the scheme,
 - (b) any entitlement under a qualifying pension scheme to the present payment of a pension or other benefit that a qualifying member of the scheme has at the relevant time, or 25
 - (c) any entitlement to benefits, or rights to future benefits, under a qualifying pension scheme that a person who has survived a qualifying member of the scheme has at the relevant time in respect of the member; 30
 - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member of the scheme;
 - “qualifying pension scheme” means a pension scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of – 35
 - (a) a transferor in relation to a transfer scheme under paragraph 1 of Schedule 6, or
 - (b) an associate of such a transferor; 40

- “the relevant time” means the time immediately before the prescribed date (which may be before the passing of this Act).
- (2) For the purposes of the definition of “qualifying accrued rights” in sub-paragraph (1) –
- (a) references to pensions or other benefits (including future benefits) include money purchase benefits; 5
 - (b) references to a right include a pension credit right.
- (3) In the event that a section of a qualifying pension scheme is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the qualifying pension scheme, any reference in this Schedule to the qualifying pension scheme includes a reference to that separate pension scheme. 10

Participation in qualifying pension schemes and transfer of assets and rights

- 2 (1) The Secretary of State may by regulations make such pensions provision as the Secretary of State considers appropriate – 15
- (a) in preparation for or in connection with the designation of a person under section 113(1), or
 - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of Schedule 6.
- (2) “Pensions provision” means provision in connection with a qualifying pension scheme, including provision for – 20
- (a) enabling an entity to which sub-paragraph (3) applies to participate in the scheme;
 - (b) the division of the scheme into different sections;
 - (c) the participation in the different sections of different persons (including entities to which sub-paragraph (3) applies); 25
 - (d) the allocation of assets, rights, liabilities or obligations between the different sections;
 - (e) the transfer of assets and qualifying accrued rights from the scheme to another pension scheme (whether or not a qualifying pension scheme), without the need for any approval or consent to the transfer; 30
 - (f) the valuation of assets and qualifying accrued rights in accordance with provision made by the regulations, for the purposes of their allocation to a particular section or for the purposes of their transfer as mentioned in paragraph (e); 35
 - (g) the discharge of liabilities in respect of qualifying accrued rights that are transferred.
- (3) This sub-paragraph applies to the following entities – 40
- (a) the ISOP;
 - (b) an associate of the ISOP;
 - (c) any other entity which employs a person –

- (i) whose contract of employment is transferred by a transfer scheme under paragraph 1 of Schedule 6, and
 - (ii) who is an active member of the qualifying pension scheme at the relevant time.
- (4) Regulations under sub-paragraph (1) may have retrospective effect. 5
- (5) Before making regulations under sub-paragraph (1), the Secretary of State must consult—
 - (a) the trustee of the qualifying pension scheme or schemes in question, and
 - (b) the person who is the principal employer in relation to that scheme or those schemes. 10

Amendment of qualifying pension schemes

- 3 (1) The Secretary of State may by regulations make such amendments of a qualifying pension scheme as the Secretary of State considers appropriate—
 - (a) in preparation for or in connection with the designation of a person under section 113(1), 15
 - (b) otherwise in connection with the making of a transfer scheme under paragraph 1 of Schedule 6, or
 - (c) in connection with the making of regulations under paragraph 2 of this Schedule. 20
- (2) The provision that may be made under sub-paragraph (1) includes—
 - (a) provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the scheme to be determined in particular circumstances by reference to pensionable service under the scheme in question before and after the relevant time; 25
 - (b) provision for the transfer out of assets, rights, liabilities or obligations from one or more new sections of a qualifying pension scheme to another pension scheme (whether or not a qualifying pension scheme); 30
 - (c) provision for the transfer in of assets, rights, liabilities or obligations to one or more new sections of one qualifying pension scheme from one or more new sections of another qualifying pension scheme.
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the Secretary of State must consult— 35
 - (a) the trustee of the qualifying pension scheme being amended, and
 - (b) the person who is the principal employer in relation to that scheme.
- (5) In this paragraph—
 - (a) the reference to making amendments of a qualifying pension scheme includes a reference to amending the trust deed or rules of that 40

- scheme or any other instrument relating to the constitution, management or operation of the scheme;
- (b) references to a “new” section of a qualifying pension scheme are to one of the sections into which the scheme is divided by regulations under paragraph 2(1);
 - (c) “pensionable service” has the same meaning as in section 124(1) of the Pensions Act 1995.

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Protection against adverse treatment

- 4 (1) When exercising the power to make regulations under paragraph 2 or 3, the Secretary of State must ensure that the following requirements are met in respect of each person who is or has been a qualifying member of a qualifying pension scheme –
- (a) the general scheme requirement;
 - (b) where the regulations relate to a person’s rights or entitlements to money purchase benefits other than pensions in payment, the money purchase requirement.
- (2) The general scheme requirement is that the provision for the payment of pensions or other benefits that is contained in a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before its exercise.
- (3) The money purchase requirement is that the value of the rights or entitlements to money purchase benefits, other than pensions in payment, that a person has under a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) immediately after, and as a result of, the exercise of the power is at least equivalent to the value of the person’s rights or entitlements before its exercise.
- (4) Nothing in sub-paragraph (1) requires –
- (a) the different sections (if any) of a qualifying pension scheme to be established in a particular way,
 - (b) particular provisions of the sections, or of a pension scheme to which a transfer is made by virtue of paragraph 2(2)(e), to take the same or similar form, or
 - (c) any power or duty conferred or imposed by a qualifying pension scheme to be exercised or performed in a particular way.
- (5) The power of the Secretary of State to amend a qualifying pension scheme may not be exercised in any way that would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless –
- (a) the applicable consent requirements are satisfied in respect of the exercise of the power in that way, or
 - (b) the scheme is amended in the prescribed manner.

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- (6) The applicable consent requirements are the requirements that apply in relation to obtaining the consent of members of the scheme to its amendment (including any such requirements set out in the trust deed or rules of the scheme).

Information and assistance

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- 5 (1) The Secretary of State may direct a person within sub-paragraph (3) to provide the Secretary of State with—
- (a) specified pensions information, or
 - (b) such specified assistance in relation to a qualifying pension scheme as the Secretary of State may reasonably require in preparation for or in connection with the exercise of a power conferred on the Secretary of State by this Schedule. 10
- (2) “Pensions information” means information that—
- (a) relates to pensions or other benefits under a qualifying pension scheme, or 15
 - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme.
- (3) The following persons are within this sub-paragraph—
- (a) the trustee of a qualifying pension scheme;
 - (b) any person who exercises functions on behalf of a person within paragraph (a); 20
 - (c) any person who is or has been an employer of a qualifying member of a qualifying pension scheme.
- (4) The power under sub-paragraph (1) ceases to be exercisable—
- (a) at the end of the period of 3 years beginning with the time from which the first designation under section 113(1) has effect, or 25
 - (b) if at any time before the end of that period a transfer scheme is made under paragraph 1(1) of Schedule 6, at the end of the period of 3 years beginning with the date (or, if there is more than one, the first date) from which the transfer of property, rights or liabilities under the scheme takes effect. 30
- (5) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the Secretary of State with the specified pensions information or assistance—
- (a) within the specified period, and 35
 - (b) in the specified form and manner.
- (6) A direction under sub-paragraph (1) is enforceable by the Secretary of State in civil proceedings—
- (a) for an injunction,
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or 40
 - (c) for any other appropriate remedy or relief.

- (7) The Secretary of State must reimburse a person for costs reasonably incurred by the person in complying with a direction under sub-paragraph (1).
- (8) In this paragraph, “specified” means specified in the direction.

Consultation

- 6 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time). 5

National Security and Investment Act 2021

- 7 The exercise by the Secretary of State of a power conferred on the Secretary of State by any provision of this Schedule is not a trigger event for the purposes of the National Security and Investment Act 2021. 10

SCHEDULE 8

Section 130

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 4

Gas Act 1986

- 1 The Gas Act 1986 is amended as follows. 15
- 2 In section 6A (exemptions from prohibition), in subsection (1), after “(c)” insert “, (ca)”.

Electricity Act 1989

- 3 The Electricity Act 1989 is amended as follows.
- 4 In section 4 (prohibition on unlicensed supply, transmission etc of electricity), in subsection (3A)– 20
- (a) omit paragraph (a) (including the “or” at the end);
- (b) in paragraph (b), for “such a transmission system” substitute “a transmission system by means of which the transmission of electricity takes place”. 25
- 5 In section 5 (exemptions from prohibition), in subsection (1), after “(c),” insert “(ca),”.
- 6 In section 10 (powers etc of licence holders), in subsection (1)(a), after “licence” insert “or of an electricity system operator licence”.
- 7 In section 49 (keeping of register), in subsection (2)(c), after “under” insert “or in respect of”. 30

Utilities Act 2000

- 8 (1) Section 105 of the Utilities Act 2000 (general restrictions on disclosure of information) is amended as follows.
- (2) In subsection (1)(a), after “2022” insert “or Part 4 of the Energy Act 2022”.
- (3) In subsection (4), after paragraph (ba) insert— 5
“(bb) for the purpose of facilitating the performance by the Independent System Operator and Planner of any of its functions;”.
- (4) In subsection (10), at the appropriate place insert— 10
““the Independent System Operator and Planner” means the person for the time being designated under section 113(1) of the Energy Act 2022;”.

SCHEDULE 9

Section 151(1)

GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES: TRANSITIONAL PROVISION

Meaning of “qualifying document”, “qualifying contract” and “qualifying central system” 15

- 1 (1) In this Schedule, “qualifying document” means a document that—
- (a) is maintained in accordance with the conditions of a relevant licence, and
- (b) is designated for the purposes of this Schedule by notice given by the Secretary of State. 20
- (2) Where at any time after the day on which this paragraph comes into force the whole or part of the provision made by a qualifying document is incorporated into a different document (“document B”), document B is to be treated for the purposes of this Schedule as if it were a qualifying document even if it is not designated under sub-paragraph (1)(b). 25
- (3) In this Schedule, “qualifying contract” means a contract—
- (a) that constitutes the whole or part of the arrangements under which a qualifying document has effect,
- (b) that relates to the governance of a qualifying document, or
- (c) that is a central system contract. 30
- (4) For the purposes of sub-paragraph (3)(c), a contract is a “central system contract” if—
- (a) it relates to the operation of a qualifying central system, and
- (b) the person responsible for operating or procuring the operation of the central system is a party to the contract. 35

- (5) In this Schedule, “qualifying central system” means a central system that is designated for the purposes of this Schedule by notice given by the Secretary of State.
- (6) The Secretary of State may revoke a designation under sub-paragraph (1)(b) or (5). 5
- (7) The Secretary of State may not designate a document or central system under sub-paragraph (1)(b) or (5), or revoke a designation, except so as to give effect to a recommendation of the GEMA.
- (8) Before making a recommendation to the Secretary of State for the purposes of sub-paragraph (7), the GEMA must consult such persons as it considers appropriate. 10

Purposes for which powers under this Schedule may be exercised

- 2 (1) The GEMA may exercise a power conferred on it by paragraph 4, 6, 7, 8 or 11 only if the GEMA considers it appropriate to exercise the power –
- (a) for the purposes of or in connection with establishing the role of code manager in respect of a document that is expected to become a designated document, 15
- (b) in preparation for the granting of a code manager licence to a person in respect of a designated document,
- (c) for the purposes of facilitating the carrying out by the GEMA of its functions under this Part, 20
- (d) for the purposes of promoting the efficient governance of arrangements under one or more qualifying documents (subject to sub-paragraph (2)), or
- (e) for the purposes of harmonising the governance of particular qualifying documents or of qualifying documents in general. 25
- (2) Sub-paragraph (1)(d) does not apply to the exercise of the power conferred by paragraph 6 in relation to a qualifying contract within paragraph 1(3)(b) or (c).

Expiry of powers under this Schedule 30

- 3 The powers conferred on the GEMA by paragraphs 4, 6, 7, 8 and 11 in relation to a particular qualifying document expire –
- (a) when the document becomes a designated document, or
- (b) if earlier, at the end of the period of 7 years after the day on which this Act is passed. 35

Modification of qualifying documents and relevant licences

- 4 (1) The GEMA may modify –
- (a) a qualifying document;
- (b) the conditions of a particular relevant licence;
- (c) the standard conditions of relevant licences of a particular type. 40

- (2) Before making a modification under sub-paragraph (1), the GEMA must—
- (a) publish a notice about the proposed modification,
 - (b) send a copy of the notice to the persons listed in sub-paragraph (3), and
 - (c) consider any representations made within the period specified in the notice about the proposed modification or the date from which it would take effect. 5
- (3) The persons mentioned in sub-paragraph (2)(b) are—
- (a) the Secretary of State;
 - (b) each relevant licence holder; 10
 - (c) the National Association of Citizens Advice Bureaux;
 - (d) the Scottish Association of Citizens Advice Bureaux;
 - (e) Consumer Scotland;
 - (f) where the proposed modification relates to a licence for the purposes of section 5 of the Gas Act 1986, the Health and Safety Executive; 15
 - (g) such other persons as the GEMA considers appropriate.
- (4) A notice under sub-paragraph (2) must—
- (a) state that the GEMA proposes to make a modification;
 - (b) set out the proposed modification and its effect;
 - (c) specify the date from which the GEMA proposes that the modification will have effect; 20
 - (d) state the reasons why the GEMA proposes to make the modification.
- (5) If, after complying with sub-paragraphs (2) to (4) in relation to a modification, the GEMA decides to make a modification, it must publish a notice about the decision. 25
- (6) A notice under sub-paragraph (5) must—
- (a) state that the GEMA has decided to make the modification;
 - (b) set out the modification and its effect;
 - (c) specify the date from which the modification has effect;
 - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under sub-paragraph (2); 30
 - (e) state the reason for any differences between the modification set out in the notice and the proposed modification.
- (7) A notice under this paragraph about a modification or decision must be published in such manner as the GEMA considers appropriate for bringing it to the attention of those likely to be affected by the making of the modification or decision. 35
- (8) In this paragraph, “relevant licence holder”—
- (a) in relation to the modification of a qualifying document, means the holder of a relevant licence in accordance with the conditions of which the document is maintained; 40

- (b) in relation to the modification of standard conditions of relevant licences of any type, means the holder of a relevant licence of that type—
- (i) that is to be modified by the inclusion of any new standard condition, or 5
 - (ii) that includes any standard conditions to which the modifications relate which are in effect during the period specified by virtue of sub-paragraph (2)(c);
- (c) in relation to the modification of a condition of a particular relevant licence (other than a standard condition), means the holder of that particular relevant licence. 10
- (9) For the purposes of this paragraph, “modification”, in relation to a qualifying document, includes the incorporation of the whole or part of the provision made by the document into another document.
- 5 (1) Sub-paragraphs (2) and (3) apply where at any time the GEMA modifies the conditions of licences of any type under paragraph 4. 15
- (2) If the conditions modified are standard conditions, the GEMA must—
- (a) also make (as nearly as may be) the same modifications of those conditions for the purposes of their incorporation in licences of that type granted after that time, and 20
 - (b) publish the modifications in such manner as it considers appropriate for the purpose of bringing them to the attention of persons likely to be affected by the making of the modifications.
- (3) The GEMA may make such incidental or consequential modifications of any conditions of licences of any type as it considers necessary or expedient. 25
- (4) The modification of part of a standard condition of a particular licence under paragraph 4 does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Electricity Act 1989 (in the case of a licence under section 6(1) of that Act) or Part 1 of the Gas Act 1986 (in the case of a licence under section 7, 7ZA, 7A or 7AB of that Act). 30

Amendment or termination of qualifying contracts

- 6 (1) The GEMA may amend a qualifying contract.
- (2) Before making an amendment under sub-paragraph (1), the GEMA must—
- (a) send a notice about the proposed amendment to the persons listed in sub-paragraph (4), and 35
 - (b) consider any representations made within the period specified in the notice about the proposed amendment or the date from which it would take effect.
- (3) A notice under sub-paragraph (2) must— 40
- (a) state that the GEMA proposes to make an amendment;
 - (b) set out the proposed amendment and its effect;

- (c) specify the date from which the GEMA proposes that the amendment will have effect;
 - (d) state the reasons why the GEMA proposes to make the amendment.
- (4) The persons mentioned in sub-paragraph (2)(a) are—
- (a) each person who is a party to the contract to which the proposed amendment relates; 5
 - (b) any person liable by virtue of paragraph 12 to make a payment by way of compensation as a result of the proposed amendment;
 - (c) such other persons as the GEMA considers appropriate.
- (5) If, after complying with sub-paragraphs (2) to (4) in relation to an amendment, the GEMA decides to make an amendment, it must send a notice to the persons listed in sub-paragraph (4) about the decision. 10
- (6) A notice under sub-paragraph (5) must—
- (a) state that the GEMA has decided to make the amendment;
 - (b) set out the amendment and its effect; 15
 - (c) specify the date from which the amendment has effect;
 - (d) state how the GEMA has taken account of any representations made in the period specified in the notice under sub-paragraph (2);
 - (e) state the reason for any differences between the amendment set out in the notice and the proposed amendment. 20
- (7) In this paragraph, “amend”, in relation to a contract, includes terminate.

Arrangements in connection with code consolidation

- 7 (1) The GEMA may, in connection with the consolidation of one or more qualifying documents, make a scheme for the purpose of securing the continued effect of rights or liabilities under a contract that is a qualifying contract within paragraph 1(3)(a). 25
- (2) “Consolidation”, in relation to a qualifying document, means the incorporation of the whole or part of the provision made by the document into another document.
- (3) A scheme under this paragraph may make incidental, supplementary or consequential provision (including provision amending the qualifying contract). 30

Transfer schemes

- 8 (1) The GEMA may make one or more schemes for the transfer of designated property, rights or liabilities from one person (“the transferor”) to another person (“the transferee”) where the condition in sub-paragraph (2) is met. 35
- (2) The condition is that the designated property, rights or liabilities—
- (a) relate to the operation of the provisions of a qualifying document, and

- (b) are reasonably required by the transferee for the purposes of its obligations under a code manager licence (whether or not the licence has yet been granted to the transferee).
- (3) On the transfer date, the designated property, rights and liabilities are transferred and vest in accordance with the scheme. 5
- (4) The rights and liabilities that may be transferred by a scheme include those arising under or in connection with a contract of employment.
- (5) A certificate by the GEMA that anything specified in the certificate has vested in any person by virtue of a scheme is conclusive evidence for all purposes of that fact. 10
- (6) A scheme may make provision—
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee; 15
 - (b) for references to the transferor in any agreement (whether written or not), instrument or other document relating to any property, rights or liabilities transferred by the scheme to be treated as references to the transferee;
 - (c) about the continuation of legal proceedings; 20
 - (d) for transferring property, rights or liabilities that could not otherwise be transferred or assigned;
 - (e) for transferring property, rights and liabilities irrespective of any requirement for consent that would otherwise apply;
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities; 25
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme; 30
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme; 35
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme.
- (7) Sub-paragraph (6)(b) does not apply to references in—
- (a) primary legislation, or 40
 - (b) an instrument made under primary legislation.
- (8) A scheme may—
- (a) include incidental, supplementary or consequential provision;

- (b) make transitory or transitional provision or savings;
 - (c) make different provision for different purposes;
 - (d) make provision subject to exceptions.
- (9) In this paragraph—
- “designated”, in relation to a scheme, means specified in or determined in accordance with the scheme; 5
 - “primary legislation” means—
 - (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) an Act or Measure of Senedd Cymru, or 10
 - (d) Northern Ireland legislation;
 - “property” includes interests of any description;
 - “the transfer date” means a date specified by a scheme as the date on which the transfer is to have effect.
- 9 (1) Before making a scheme under paragraph 8, the GEMA must consult— 15
- (a) the transferor;
 - (b) the transferee;
 - (c) such other persons as the GEMA considers appropriate.
- (2) The approval of the Secretary of State is required for the making of a scheme under paragraph 8. 20
- 10 (1) The GEMA may modify a scheme under paragraph 8.
- (2) The power under sub-paragraph (1) is not exercisable in relation to a scheme after the end of the period of 12 months beginning with the day on which the scheme takes effect.
- (3) Paragraphs 8 and 9 apply in relation to the modification of a scheme as they apply in relation to the making of the scheme. 25

Information

- 11 (1) The GEMA may direct a person who holds information reasonably required by the GEMA—
- (a) in preparation for the granting of a code manager licence, or 30
 - (b) for the purposes of or in connection with the exercise of any of the other functions of the GEMA under this Schedule,
- to provide the information to the GEMA.
- (2) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the GEMA with the information— 35
- (a) within the period specified in the direction, and
 - (b) in the form and manner so specified.
- (3) A direction given to a person under sub-paragraph (1) is enforceable by the GEMA in civil proceedings—
- (a) for an injunction, 40

- (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
- (c) for any other appropriate remedy or relief.

Compensation

- 12 (1) The relevant code manager must make a payment to a person within sub-paragraph (2) in compensation for financial loss suffered by the person in consequence of the exercise by the GEMA of –
- (a) the power under paragraph 6 in relation to a qualifying contract within paragraph 1(3)(b) or (c), or
 - (b) the power under paragraph 8 (transfer schemes). 10
- (2) The persons within this sub-paragraph are –
- (a) a person who is a party to a contract that is amended or terminated under paragraph 6;
 - (b) the transferor in relation to a scheme under paragraph 8;
 - (c) a person, other than the transferor or transferee in relation to a scheme under paragraph 8, who has a right in relation to anything transferred by the scheme. 15
- (3) The amount of a payment under sub-paragraph (1) is to be –
- (a) in a case relating to the exercise of the power under paragraph 6, such amount as the GEMA considers to be just; 20
 - (b) in a case relating to the exercise of the power under paragraph 8, an amount specified in or determined in accordance with provision made in the scheme in question.
- (4) In this paragraph, “the relevant code manager” means –
- (a) in relation to the exercise of the power under paragraph 6, the person who holds a code manager licence in relation to the document to which the qualifying contract in question relates; 25
 - (b) in relation to the exercise of the power under paragraph 8, the person who is the transferee in relation to the scheme in question.
- (5) The GEMA may in a particular case direct – 30
- (a) which person is the relevant code manager for the purposes of this paragraph;
 - (b) that two or more persons are jointly to be the relevant code manager for those purposes.
- (6) The Secretary of State may in a particular case direct that the duty under sub-paragraph (1) is to be discharged by a person specified in the direction (instead of by the relevant code manager). 35

Other

- 13 Any requirement imposed by this Schedule to carry out consultation may be satisfied by consultation before the passing of this Act (as well as by consultation after that time). 40

SCHEDULE 10

Section 151(2)

GOVERNANCE OF GAS AND ELECTRICITY INDUSTRY CODES: PENSIONS

Introductory

- 1 (1) In this Schedule—
- “active member” has the same meaning as in section 124(1) of the Pensions Act 1995; 5
 - “associate” has the same meaning as in section 1152 of the Companies Act 2006;
 - “member” has the same meaning as in section 124(1) of the Pensions Act 1995; 10
 - “prescribed” means prescribed by regulations made by the GEMA;
 - “qualifying accrued rights” means—
 - (a) any right which, at the relevant time, has accrued to or in respect of a qualifying member of a qualifying pension scheme to future benefits under the scheme, 15
 - (b) any entitlement under a qualifying pension scheme to the present payment of a pension or other benefit that a qualifying member of the scheme has at the relevant time, or
 - (c) any entitlement to benefits, or rights to future benefits, under a qualifying pension scheme that a person who has survived a qualifying member of the scheme has at the relevant time in respect of the member; 20
 - “qualifying member”, in relation to a qualifying pension scheme, means a person who is or has been a member of the scheme; 25
 - “qualifying pension scheme” means a scheme that provides for the payment of pensions or other benefits to or in respect of employees or former employees of—
 - (a) a transferor in relation to a scheme under paragraph 8 of Schedule 9, or 30
 - (b) an associate of such a transferor;
 - “the relevant time” means the time immediately before the prescribed date (which may be before the passing of this Act).
- (2) For the purposes of the definition of “qualifying accrued rights” in sub-paragraph (1)— 35
- (a) references to pensions or other benefits (including future benefits) include money purchase benefits;
 - (b) references to a right include a pension credit right.
- (3) In the event that a section of a qualifying pension scheme is constituted as a separate pension scheme the members of which consist of or include persons who are qualifying members of the qualifying pension scheme, any reference in this Schedule to the qualifying pension scheme includes a reference to that separate pension scheme. 40

Participation in qualifying pension schemes and transfer of assets and rights

- 2 (1) The GEMA may by regulations make such pensions provision as it considers appropriate in preparation for the granting of a code manager licence to a person in respect of a designated document.
- (2) “Pensions provision” means provision in connection with a qualifying pension scheme, including provision for –
- (a) enabling a person to participate in the scheme;
 - (b) the division of the scheme into different sections;
 - (c) the participation in the different sections of different persons;
 - (d) the allocation of assets, rights, liabilities or obligations between the different sections; 10
 - (e) the transfer of assets and qualifying accrued rights from the scheme to another pension scheme (whether or not a qualifying pension scheme), without the need for any approval or consent to the transfer; 15
 - (f) the valuation of assets and qualifying accrued rights in accordance with provision made by the regulations, for the purposes of their allocation to a particular section or for the purposes of their transfer as mentioned in paragraph (e);
 - (g) the discharge of liabilities in respect of qualifying accrued rights that are transferred. 20
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the GEMA must consult –
- (a) the trustee of the qualifying pension scheme or schemes in question, and 25
 - (b) the person who is the principal employer in relation to that scheme or those schemes.
- (5) The approval of the Secretary of State is required for the making of regulations under sub-paragraph (1). 30

Amendment of qualifying pension schemes

- 3 (1) The GEMA may by regulations make such amendments of a qualifying pension scheme as it considers appropriate –
- (a) in preparation for the granting of a code manager licence to a person in respect of a designated document, or 35
 - (b) in connection with the making of regulations under paragraph 2.
- (2) The provision that may be made under sub-paragraph (1) includes –
- (a) provision authorising or requiring the amount of pensions or other benefits payable to or in respect of qualifying members of the scheme to be determined in particular circumstances by reference to pensionable service under the scheme in question before and after the relevant time; 40

- (b) provision for the transfer out of assets, rights, liabilities or obligations from one or more new sections of a qualifying pension scheme to another pension scheme (whether or not a qualifying pension scheme);
 - (c) provision for the transfer in of assets, rights, liabilities or obligations to one or more new sections of one qualifying pension scheme from one or more new sections of another qualifying pension scheme. 5
- (3) Regulations under sub-paragraph (1) may have retrospective effect.
- (4) Before making regulations under sub-paragraph (1), the GEMA must consult— 10
- (a) the trustee of the qualifying pension scheme being amended, and
 - (b) the person who is the principal employer in relation to that scheme.
- (5) The approval of the Secretary of State is required for the making of regulations under sub-paragraph (1).
- (6) In this paragraph— 15
- (a) the reference to making amendments of a qualifying pension scheme includes a reference to amending the trust deed or rules of that scheme or any other instrument relating to the constitution, management or operation of the scheme;
 - (b) references to a “new” section of a qualifying pension scheme are to one of the sections into which the scheme is divided by regulations under paragraph 2(1); 20
 - (c) “pensionable service” has the same meaning as in section 124(1) of the Pensions Act 1995.

Protection against adverse treatment 25

- 4 (1) When exercising the power to make regulations under paragraph 2 or 3, the GEMA must ensure that the following requirements are met in respect of each person who is or has been a qualifying member of a qualifying pension scheme—
- (a) the general scheme requirement; 30
 - (b) where the regulations relate to a person’s rights or entitlements to money purchase benefits other than pensions in payment, the money purchase requirement.
- (2) The general scheme requirement is that the provision for the payment of pensions or other benefits that is contained in a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) is, in all material respects, at least as good immediately after the exercise of the power as it is immediately before its exercise. 35
- (3) The money purchase requirement is that the value of the rights or entitlements to money purchase benefits, other than pensions in payment, that a person has under a qualifying pension scheme or any other pension scheme to which a transfer is made by virtue of paragraph 2(2)(e) immediately after, and as a result of, the exercise of the power is at least 40

equivalent to the value of the person’s rights or entitlements before its exercise.

- (4) Nothing in sub-paragraph (1) requires—
- (a) the different sections (if any) of a qualifying pension scheme to be established in a particular way, 5
 - (b) particular provisions of the sections, or of a pension scheme to which a transfer is made by virtue of paragraph 2(2)(e), to take the same or similar form, or
 - (c) any power or duty conferred or imposed by a qualifying pension scheme to be exercised or performed in a particular way. 10
- (5) The power of the GEMA to amend a qualifying pension scheme may not be exercised in any way that would or might adversely affect any provision of the scheme made in respect of qualifying accrued rights unless—
- (a) the applicable consent requirements are satisfied in respect of the exercise of the power in that way, or 15
 - (b) the scheme is amended in the prescribed manner.
- (6) The applicable consent requirements are the requirements that apply in relation to obtaining the consent of members of the scheme to its amendment (including any such requirements set out in the trust deed or rules of the scheme). 20

Information

- 5 (1) The GEMA may direct a person who holds relevant pensions information to provide it to the GEMA.
- (2) “Pensions information” means specified information that—
- (a) relates to pensions or other benefits under a qualifying pension scheme, or 25
 - (b) relates to the administration of a qualifying pension scheme in respect of pensions or other benefits under the scheme.
- (3) A person to whom a direction is given under sub-paragraph (1) must, so far as reasonably practicable, provide the specified pensions information—
- (a) within the specified period, and 30
 - (b) in the specified form and manner.
- (4) A direction under sub-paragraph (1) is enforceable by the GEMA in civil proceedings—
- (a) for an injunction, 35
 - (b) for specific performance of a statutory duty under section 45 of the Court of Session Act 1988, or
 - (c) for any other appropriate remedy or relief.
- (5) In this paragraph, “specified” means specified in the direction.

SCHEDULE 11

Section 152

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 5

Gas Act 1986

- 1 The Gas Act 1986 is amended as follows.
- 2 In section 6A(1) (power to grant exemptions from prohibition), for “or (d)” 5
substitute “, (d) or (e)”.
- 3 (1) Section 28 (orders for securing compliance with certain provisions) is
amended as follows.
- (2) In subsection (8), in the definition of “regulated person”, after paragraph 10
(f) insert—
- “(g) a responsible body for a central system;”.
- (3) After subsection (8) insert—
- “(8A) In paragraph (g) of the definition of “regulated person” in subsection 15
(8), the reference to a responsible body for a central system is a
reference to a person for the time being specified in regulations
under section 135 of the Energy Act 2022 in relation to a designated
central system (within the meaning of that Act).”
- 4 In Schedule 4B (provisions imposing obligations enforceable as relevant 20
requirements), after paragraph 9A insert—
- “Responsible bodies for central systems*
- 9B (1) Section 145(3) of the Energy Act 2022 is a relevant provision in
relation to a responsible body for a central system.
- (2) The reference in sub-paragraph (1) to a responsible body for a 25
central system is a reference to a person for the time being
specified in regulations under section 135 of the Energy Act 2022
in relation to a designated central system (within the meaning of
that Act).”

Electricity Act 1989

- 5 The Electricity Act 1989 is amended as follows.
- 6 In section 5(1) (power to grant exemptions from prohibition), for “or (e)” 30
substitute “, (e) or (f)”.
- 7 (1) Section 137 (orders for securing compliance) is amended as follows.
- (2) In subsection (8), in the definition of “regulated person”, after paragraph
(d) insert—
- “(da) a responsible body for a central system;”;
- 35

- (3) After subsection (8) insert—
- “(8A) In paragraph (da) of the definition of “regulated person” in subsection (8), the reference to a responsible body for a central system is a reference to a person for the time being specified in regulations under section 135 of the Energy Act 2022 in relation to a designated central system (within the meaning of that Act).” 5
- 8 In Schedule 6A (provisions imposing obligations enforceable as relevant requirements), after paragraph 9 insert—
- “Responsible bodies for central systems
- 9ZA (1) Section 145(3) of the Energy Act 2022 is a relevant provision in relation to a responsible body for a central system. 10
- (2) The reference in sub-paragraph (1) to a responsible body for a central system is a reference to a person for the time being specified in regulations under section 135 of the Energy Act 2022 in relation to a designated central system (within the meaning of that Act).” 15
- Energy Act 2004*
- 9 The Energy Act 2004 is amended as follows.
- 10 In section 173 (appeals to the Competition and Markets Authority), after subsection (2B) insert— 20
- “(2C) This section also applies to a decision by GEMA to modify a designated document (within the meaning of Part 5 of the Energy Act 2022) under section 143 of that Act.”
- 11 (1) Schedule 22 (procedure for appeals under section 173) is amended as follows. 25
- (2) In paragraph 4 (time limit for representations and observations)—
- (a) in sub-paragraph (1), for the words from “fifteen working days” to the end substitute “the relevant period”;
- (b) after sub-paragraph (1) insert—
- “(1A) “The relevant period” means— 30
- (a) 15 working days following the day of the making of the application for permission to bring the appeal, or
- (b) such longer period following that day as an authorised member of the CMA may allow.”; 35
- (c) in sub-paragraph (2), for “that period of fifteen working days” substitute “the relevant period”.
- (3) In paragraph 6 (timetable for determination of appeal)—
- (a) in sub-paragraph (1), for “thirty working days” substitute “4 months”; 40

- (b) in sub-paragraph (2) –
 - (i) for “thirty working days” substitute “4 months”;
 - (ii) for “ten more working days” substitute “1 month”.

SCHEDULE 12

Section 153

COMPETITIVE TENDERS FOR ELECTRICITY PROJECTS

5

PART 1

AMENDMENTS OF ELECTRICITY ACT 1989

- 1 The Electricity Act 1989 is amended as follows.
- 2 After section 6B insert –
 - “6BA Meaning of “relevant electricity project”, “relevant licence” and “relevant contract”** 10
 - (1) In this Part, “relevant electricity project” means a project –
 - (a) that relates to the total system, an electricity interconnector or a multi-purpose interconnector, and
 - (b) in relation to which criteria specified in regulations made by the Secretary of State are satisfied. 15
 - (2) In subsection (1)(a), “the total system” means all transmission systems and distribution systems in Great Britain and offshore waters.
 - (3) In this Part, “relevant licence” means – 20
 - (a) a transmission licence that does not authorise the licence holder to co-ordinate and direct the flow of electricity as described in section 4(1)(ca);
 - (b) a generation licence, a distribution licence, an interconnector licence or an MPI licence. 25
 - (4) In this Part, “relevant contract” means a contract, entered into by a person with the holder of a transmission licence, a system operator electricity licence or a distribution licence (referred to in this Part as a “contract counterparty”), for the carrying out of a relevant electricity project. 30
 - (5) Regulations under this section may make different provision for different purposes.
 - (6) Before making regulations under this section, the Secretary of State must consult –
 - (a) the Authority, 35

- (b) such holders of relevant licences as the Secretary of State considers appropriate, and
- (c) such other persons as the Secretary of State considers appropriate.

6BB Designation of a delivery body 5

- (1) The Secretary of State may by regulations designate a person for the purposes of this section; and a person so designated is referred to in this Part as a “delivery body”. 5
- (2) The designation of a person for the purposes of this section has effect subject to any conditions imposed by the Secretary of State in the regulations designating the person. 10
- (3) More than one person may be designated for the purposes of this section at the same time.
- (4) Regulations under this section may designate different persons for different purposes. 15
- (5) The Secretary of State may by regulations revoke a person’s designation if the person ceases to meet any condition subject to which the designation has effect.
- (6) The Secretary of State may make indemnity payments to a delivery body (subject to subsection (9)). 20
- (7) An indemnity payment is a payment in respect of costs or expenses incurred by a delivery body in connection with judicial review proceedings in relation to anything done, or omitted to be done, in the exercise (or purported exercise) of functions conferred on the body by regulations under section 6C. 25
- (8) An indemnity payment may be made subject to such conditions as may be determined by the Secretary of State.
- (9) Subsection (6) does not authorise the making of a payment to the Authority (where it is designated under subsection (1)).”

3 For sections 6C and 6D substitute – 30

“6C Competitive tenders

- (1) The Authority may by regulations (“tender regulations”) make such provision as appears to it to be appropriate for facilitating the making by a delivery body of – 35
 - (a) a decision whether to hold a tender exercise in relation to a relevant electricity project;
 - (b) in prescribed circumstances, a determination on a competitive basis of any of the matters listed in subsection (2).
- (2) Those matters are –

- (a) the person by whom a relevant electricity project is to be carried out;
 - (b) the person to whom a relevant licence is to be granted (whether for the purposes of a relevant electricity project or otherwise);
 - (c) the person to whom a relevant contract is to be awarded.
- (3) The provision mentioned in subsection (1) includes—
 - (a) provision for the Authority to determine, in prescribed cases, whether a tender exercise should be held, or continued, in relation to a relevant electricity project;
 - (b) provision for the publication, in prescribed cases, of a proposal for a relevant licence to be granted or for a relevant contract to be awarded;
 - (c) provision for the inclusion in such a proposal of an invitation to apply for such a licence or to bid for such a contract;
 - (d) provision restricting applications and bids and imposing requirements as to the period within which they must be made;
 - (e) provision for regulating the manner in which applications and bids are considered and determined.
- (4) The provision mentioned in subsection (1) also includes—
 - (a) provision conferring functions on a delivery body;
 - (b) provision authorising the Authority to conduct a review of the exercise by a delivery body of functions conferred on it by the regulations;
 - (c) provision authorising the Authority to appoint another person to conduct such a review on the Authority's behalf.
- (5) The provision that may be made by virtue of subsection (4)(a) includes provision requiring a delivery body, in prescribed circumstances, to provide information about prescribed matters to the Authority.
- (6) Tender regulations—
 - (a) may make provision by reference to a determination by the Authority or by a delivery body, or to the opinion of the Authority or of a delivery body, as to any matter;
 - (b) may dispense with or supplement provision made in relation to applications for relevant licences by or under section 6A or 6B.
- (7) The approval of the Secretary of State is required for the making of tender regulations.
- (8) The making of a determination by virtue of subsection (2)(b) or (c) that a person is to be granted a relevant licence or awarded a relevant contract does not of itself require—

- (a) the Authority to exercise its power to grant a relevant licence to the person, or
 - (b) a contract counterparty to award a relevant contract to the person,
- (as the case may be).

5

6CA Power to require information

- (1) Tender regulations may include provision authorising a person to whom subsection (2) applies (“P”), by notice given to another person (an “information notice”), to require the other person to provide relevant information to P. 10
- (2) This subsection applies to –
 - (a) the Authority;
 - (b) a delivery body;
 - (c) a contract counterparty.
- (3) “Relevant information” means information that P reasonably requires for the purposes of or in connection with the exercise of P’s functions. 15
- (4) References in this section to the Authority include a person appointed by the Authority by virtue of section 6C(4)(c), where the information sought relates to a function conferred by virtue of section 6C(4)(b) (review of activities of delivery body). 20
- (5) Provision made by virtue of subsection (1) must require an information notice –
 - (a) to specify or describe the information sought, and
 - (b) to specify the time by which the information must be provided. 25
- (6) Provision made by virtue of subsection (1) may include provision –
 - (a) for an information notice and information obtained in pursuance of it to be shared with the Authority, where the notice is given by a person other than the Authority; 30
 - (b) for the classification and protection of confidential or sensitive information;
 - (c) for the enforcement by the Authority of a requirement to provide information in pursuance of an information notice;
 - (d) for the amount of any financial penalty imposed on a person by virtue of paragraph (c) to be determined by the Authority in accordance with tender regulations; 35

6CB Recovery of tender costs

- (1) Tender regulations may include provision requiring –

- (a) the payment to the Authority or a delivery body, in prescribed circumstances, of amounts in respect of—
 - (i) tender costs of the Authority, or of the delivery body, in relation to a tender exercise;
 - (ii) such amounts in respect of the Authority’s tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise; 5
 - (iii) such amounts in respect of the delivery body’s tender costs as the Authority considers appropriate, where those costs are not attributable to a particular tender exercise. 10
 - (b) the provision to the Authority or to a delivery body, in prescribed circumstances, of a deposit of a prescribed amount in respect of a liability which a person has, or may in future have, by virtue of paragraph (a) in relation to a relevant licence or relevant contract; 15
 - (c) the provision to the Authority or to a delivery body, in prescribed circumstances, of security in a form approved by it in respect of such a liability. 20
- (2) The provision that may be made by virtue of subsection (1)(a) includes provision requiring the payment of cost assessment costs incurred by—
- (a) the Authority, or
 - (b) the delivery body, 25
- after the Authority or delivery body (as the case may be) has taken the steps required by virtue of subsections (7) to (9) in relation to the tender exercise.
- (3) The regulations may require the payments to be made, or the deposit or security to be provided, by one or more of the following—
- (a) any person who has made a connection request for the purposes of which the tender exercise has been, is being, or is to be, held; 30
 - (b) any person who made a connection request for the purposes of which any previous tender exercise relating to the same transmission system, or a transmission system consisting of some or all of the same lines or plant or connecting any of the same generating stations or substations, was held; 35
 - (c) any person who made a connection request for the purposes of which any previous tender exercise relating to the same distribution system, or a distribution system consisting of some or all of the same lines or plant or connecting any of same premises or other distribution systems, was held; 40

- (d) any person who operates a generating station which is connected to the transmission or distribution system to which the tender exercise relates;
 - (e) any person who submits an application for the relevant licence or bids for the award of a relevant contract to which the tender exercise relates; 5
 - (f) any person who is the holder of a transmission licence, a distribution licence, an interconnector licence or an MPI licence.
- (4) The regulations may make provision about how – 10
- (a) payments are to be made, and
 - (b) deposits or other forms of security are to be provided, including provision for them to be made or provided by a person approved by the Authority or by a delivery body.
- (5) The regulations may include provision about – 15
- (a) the times at which payments are to be made, or deposits or other forms of security are to be provided, under the regulations;
 - (b) the circumstances in which a payment made in accordance with regulations made by virtue of subsection (1)(a) is to be repaid (wholly or in part); 20
 - (c) the circumstances in which such a repayment is to include an amount representing interest accrued on the whole or part of the payment;
 - (d) the circumstances in which a deposit (including any interest accrued on it) or other security provided in accordance with the regulations is to be released or forfeited (wholly or in part); 25
 - (e) the effect on a person’s participation in the tender exercise of a failure to comply with a requirement imposed by virtue of this section, and the circumstances in which the tender exercise is to stop as a result of such a failure. 30
- (6) The regulations may include provision for –
- (a) the review by the Authority, or by a person appointed by the Authority, of any tender costs determined by a delivery body; 35
 - (b) the amendment by a delivery body of its tender costs following such a review.
- (7) The regulations must ensure that, as soon as reasonably practicable after a tender exercise or series of tender exercises is finished – 40
- (a) where the Authority is the delivery body, steps are taken by the Authority, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9)

- does not exceed the Authority’s tender costs in respect of the exercise or series of exercises;
- (b) in any other case, steps are taken by the delivery body, in accordance with the regulations, to ensure that the aggregate of the amounts in subsection (9) does not exceed the aggregate of—
- (i) the Authority’s tender costs, and
- (ii) the delivery body’s tender costs,
- in respect of the exercise or series of exercises.
- (8) The regulations must also ensure that, in a case within subsection (7)(b), the aggregate of the amounts within subsection (9) so far as relating to any particular tender exercise does not include any amount that falls within paragraph (a) of the definition of tender costs in section 6CD(4) in relation to a different tender exercise.
- (9) The amounts are—
- (a) any fees under section 6A(2) in respect of applications for relevant licences,
- (b) any payments made or deposits provided in accordance with regulations made by virtue of subsection (1)(a) or (b) and not repaid, and
- (c) the value of any security provided in accordance with regulations made by virtue of subsection (1)(c) and forfeited in accordance with regulations made by virtue of subsection (5)(d),
- so far as relating to the tender exercise or series of tender exercises in question.

6CC Competitive tenders: supplementary

- (1) For the purposes of section 6CB(3), a person makes a connection request when the person makes an application to—
- (a) the holder of a co-ordination licence (in accordance with any provision made by the licence) for an offer of connection to and use of a transmission system, or
- (b) an electricity distributor (whether in accordance with any provision made by the distributor’s licence or otherwise) for an offer of connection to and use of the distributor’s distribution system.
- (2) A person (“P”) is to be treated for those purposes as having made a connection request if—
- (a) P would have made the connection request, but for the fact that another person had already made an application within subsection (1)(a) or (b), and
- (b) the benefit of that application, or any agreement resulting from it, is vested in P.

- (3) Where tender regulations –
- (a) restrict the making of applications for relevant licences or bids for relevant contracts in relation to a relevant electricity project, or
 - (b) operate so as to prevent an application or bid from being considered or further considered, if the applicant does not meet one or more prescribed requirements,
- the regulations may make provision enabling a person to apply to a relevant body for a decision as to the effect of any such restriction or requirement if the person were to make such an application or bid.
- (4) Regulations made by virtue of subsection (3) may enable a relevant body to charge a person who makes such an application or bid a prescribed fee for any decision given in response to it.
- (5) Where the successful bidder, in relation to a tender exercise, already holds a relevant licence (“the existing licence”) –
- (a) the Authority may make such modifications of the existing licence as are necessary for the purpose of giving effect to the determination resulting from the tender exercise, and
 - (b) references in this Part to the grant of a relevant licence are to be read accordingly.
- (6) Before making any modifications under subsection (5)(a), the Authority must give notice –
- (a) stating that it proposes to make the modifications and setting out their effect, and
 - (b) specifying the time (not being less than 28 days from the date of publication of the notice) within which representations or objections with respect to the proposed modifications may be made,
- and must consider any representations or objections that are duly made and not withdrawn.
- (7) Any sums received by the Authority under tender regulations are to be paid into the Consolidated Fund.
- (8) In section 6CB and this section –
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system –
 - (a) by means of which the transmission of electricity takes place, and
 - (b) the whole or a part of which is at a relevant place (within the meaning of section 4(5));
 - “functions” includes powers and duties;

“relevant body” means the Authority, a delivery body or a contract counterparty.

6CD Sections 6C to 6CC: further definitions

- (1) This section defines expressions that are used in sections 6C to 6CC (as well as in this section). 5
- (2) “Prescribed” means prescribed in or determined under tender regulations.
- (3) “Tender exercise” means the steps taken in accordance with tender regulations with a view to determining one or more of the following – 10
 - (a) the person by whom a relevant electricity project is to be carried out;
 - (b) the person to whom a relevant licence is to be granted;
 - (c) the person to whom a relevant contract is to be awarded.
- (4) “Tender costs” means – 15
 - (a) costs (including any cost assessment costs) incurred or likely to be incurred by the Authority for the purposes of a particular tender exercise or prospective tender exercise;
 - (b) costs (including any cost assessment costs) incurred or likely to be incurred by a delivery body for the purposes of a particular tender exercise or prospective tender exercise; 20
 - (c) such proportion as the Authority considers appropriate of the costs that –
 - (i) have been, or are likely to be, incurred by the Authority or by a delivery body under regulations under section 6C, and 25
 - (ii) are not directly attributable to a particular tender exercise.
- (5) “Cost assessment costs”, in relation to a tender exercise, means costs incurred or likely to be incurred by the Authority or by a delivery body in connection with any assessment of – 30
 - (a) costs that have been or are to be incurred in connection with any property, rights or liabilities necessary or expedient for the performance by a person of functions under a relevant licence granted or a relevant contract awarded to the person as a result of the tender exercise; 35
 - (b) costs incurred in connection with any property, rights or liabilities that would have been necessary or expedient for the performance of functions under a relevant licence or a relevant contract if such a licence or contract had been granted or awarded to a person as a result of the tender exercise. 40

-
- (6) “Successful bidder”, in relation to a tender exercise, is the person in respect of whom (as a result of the exercise) any of the following applies –
- (a) a delivery body determines that a relevant electricity project is to be carried out by the person; 5
 - (b) a relevant licence has been or is to be granted to the person;
 - (c) a relevant contract has been or is to be awarded to the person.
- (7) Section 6C(8) applies for the purposes of subsections (3)(b) and (c) and (6)(b) and (c) as it applies for the purposes of section 6C(2)(b) and (c).” 10
- 4 In section 6E (property schemes) –
- (a) for “offshore transmission licences” substitute “relevant licences and awards of relevant contracts”;
 - (b) in the heading, for “offshore transmission licences” substitute “relevant licences and contracts”. 15
- 5 (1) Section 6F (offshore transmission during commissioning period) is amended as follows.
- (2) In subsection (2), for “an offshore” substitute “a”.
- (3) In subsection (4) – 20
- (a) at the beginning insert “In relation to an offshore transmission system,”;
 - (b) in paragraph (a), for “the tender regulations” substitute “offshore transmission tender regulations”.
- (4) After subsection (4) insert – 25
- “(4A) In relation to a transmission system other than an offshore transmission system, the third condition is that –
- (a) either –
 - (i) a tender exercise for the granting of a relevant licence in respect of the system has been or is being held, or 30
 - (ii) a delivery body has determined to hold a tender exercise for the granting of a relevant licence in respect of the system, and
 - (b) the system, or anything forming part of it, has not been transferred to the successful bidder.” 35
- (5) In subsection (8) –
- (a) in the definition of “developer”, for the words from “section 6D(2)(a)” to the end substitute “section 6CB(3)(a) or (b) (person who makes the connection request, including any person who is to be so treated by virtue of section 6CB(2))”; 40

- (b) for the definitions of “offshore transmission” and “offshore transmission licence” substitute –
- ““offshore transmission” means the transmission within an area of offshore waters of electricity generated by a generating station in such an area; 5
- “offshore transmission licence” means a transmission licence authorising anything that forms part of a transmission system to be used for purposes connected with offshore transmission;
- “offshore transmission tender regulations” means tender regulations that provide for the determination on a competitive basis of the person to whom an offshore transmission licence is to be granted;” 10
- (c) for the definitions of “successful bidder” and “tender exercise” substitute –
- ““tender exercise” has the meaning given by section 6CD(3);” 15
- (d) in the definition of “relevant generating station”, for “an offshore” substitute “a”;
- (e) for the definition of “the tender regulations” substitute –
- ““tender regulations” has the meaning given by section 6C(1).”
- (6) In the heading omit “Offshore”. 20
- 6 (1) Section 6G (meaning of “commissioning period”) is amended as follows.
- (2) In subsection (1), for “an offshore” substitute “a”.
- (3) Omit subsections (3) to (5).
- (4) For subsection (6) substitute –
- “(6) In this section – 25
- “co-ordination licence” means a transmission licence which authorises a person to co-ordinate and direct the flow of electricity onto and over a transmission system by means of which the transmission of electricity takes place and the whole or part of which is at a place in Great Britain, in the territorial sea adjacent to Great Britain or in a Renewable Energy Zone; 30
- “relevant co-ordination licence holder” means the holder of a co-ordination licence to whom a person has applied (in accordance with any provision made by that licence) for an offer of connection to and use of a transmission system for the purposes of which the tender exercise is held.” 35
- 7 (1) Section 6H (modification of codes or agreements) is amended as follows.
- (2) In subsection (1), for “a transmission licence or a distribution licence” substitute “a relevant licence”. 40

- (3) For subsection (2) substitute –
- “(2) The Authority may make a modification under subsection (1) only if it considers it necessary or desirable for the purpose of –
- (a) implementing, or facilitating the implementation of, a determination made in accordance with regulations under section 6C, or
- (b) implementing or facilitating the operation of section 6F or 6G.”
- (4) For subsection (4) substitute –
- “(4) Before making a modification under subsection (1) the Authority must –
- (a) consult such persons as the Authority considers appropriate, and
- (b) publish a notice –
- (i) stating that it proposes to make the modification and its reasons for proposing to make it,
- (ii) setting out the proposed modification and its effect, and
- (iii) specifying the time within which representations may be made (which must not be less than the period of 28 days beginning with the day on which the notice is published).”
- (5) In subsection (5), for “the Energy Act 2013” substitute “the Energy Act 2022”.
- (6) In subsection (7), after “subsection” insert “(4) or”.
- (7) Omit subsection (8).
- (8) In the heading, after “Sections” insert “6C,”.
- 8 In section 11A (modification of conditions of licences), after subsection (9) insert –
- “(9A) This section does not apply to the modification of a licence in exercise of the power under section 6CC(5)(a) (modification of licence to give effect to determination on a tender exercise).”
- 9 In section 64(1) (interpretation etc of Part 1), at the appropriate places insert –
- ““contract counterparty” has the meaning given by section 6BA;”;
- ““delivery body” has the meaning given by section 6BB;”;
- ““offshore transmission” and “offshore transmission licence” have the meaning given by section 6F(8);”;
- ““offshore waters” means –
- (a) waters in or adjacent to Great Britain which are between the mean low water mark and the seaward limits of the territorial sea, and

- (b) waters within an area designated under section 1(7) of the Continental Shelf Act 1964;”
““relevant contract” and “relevant licence” have the meaning given by section 6BA;”;
““relevant electricity project” has the meaning given by section 6BA;”;
““relevant licence” has the meaning given by section 6BA;”.
- 10 Schedule 2A (property schemes) is amended in accordance with paragraphs 11 to 24.
- 11 For paragraph 1 substitute –
“Scheme-making power”
- 1 (1) This paragraph applies where a tender exercise is held in relation to a relevant electricity project, a relevant licence or a relevant contract.
(2) The Authority may, on an application under paragraph 3, make a scheme (“a property scheme”) providing for –
(a) the transfer to the successful bidder of, or
(b) the creation in favour of the successful bidder of rights in relation to,
any property, rights or liabilities necessary or expedient for construction, commissioning or operational purposes.”
- 12 In paragraph 2, at the end insert –
“(5) A property scheme may not contain provision for the transfer of, or creation of rights in relation to, property, rights or liabilities that the Authority considers it appropriate for the successful bidder to acquire by other means.”
- 13 Omit paragraph 5.
- 14 In paragraph 12, for “operational purposes” substitute “construction, commissioning or operational purposes” in each of the following places –
(a) sub-paragraphs (1) to (3);
(b) sub-paragraph (10);
(c) sub-paragraph (11) (in both places).
- 15 For paragraph 13 substitute –
“13 On an application for a property scheme, no scheme may be made until either a relevant licence has been granted or a relevant contract has been awarded to the successful bidder.”
- 16 In paragraph 14 –
(a) in sub-paragraph (4), for “operational purposes” substitute “construction, commissioning or operational purposes”;

- (b) in sub-paragraph (6), after paragraph (a) insert –
- “(aa) a delivery body,
 (ab) a contract counterparty.”
- 17 In paragraph 15(2), for “operational purposes” substitute “construction,
 commissioning or operational purposes”. 5
- 18 Omit paragraph 16(1)(d).
- 19 In paragraph 25(2), for “operational purposes” substitute “construction,
 commissioning or operational purposes”.
- 20 In paragraph 30, for “operational purposes” substitute “construction,
 commissioning or operational purposes”. 10
- 21 (1) Paragraph 35 is amended as follows.
- (2) In sub-paragraph (2), for “the offshore transmission licence” substitute “a
 relevant licence”.
- (3) After sub-paragraph (2) insert –
- “(2A) Where a tender exercise is held, as soon as a contract
 counterparty is satisfied that it will enter into a relevant contract 15
 with a particular person if certain matters are resolved to the
 counterparty’s satisfaction, it must publish a notice to that effect.”
- (4) In sub-paragraph (3), for “The notice” substitute “A notice under
 sub-paragraph (2) or (2A)”. 20
- (5) After sub-paragraph (4) insert –
- “(4A) A contract counterparty may withdraw a notice given by it under
 sub-paragraph (2A) by publishing a notice to that effect.”
- (6) In sub-paragraph (5), after “(2)” insert “or (2A)”.
- 22 In paragraph 36 – 25
- (a) omit sub-paragraph (1);
- (b) for sub-paragraph (2) substitute –
- “(2) Where as a result of a tender exercise the Authority
 determines to grant a relevant licence to a person, it must
 publish a notice to that effect. 30
- (2A) Where as a result of a tender exercise a person is awarded
 a relevant contract, the contract counterparty with which
 the contract is to be entered into must publish a notice to
 that effect.”
- 23 After paragraph 36 insert – 35
- “Transmission owner and distribution network owner of last resort*
- 36A (1) Before directing the holder of a transmission licence to act as a
 transmission owner of last resort pursuant to the conditions of
 the licence, the Authority may publish a notice –

- (a) stating that it proposes to give the direction, and
 - (b) identifying the licence holder to whom it proposes to give the direction.
- (2) Where a notice is published under sub-paragraph (1), this Schedule has effect as if – 5
 - (a) the licence holder is the preferred bidder in relation to a tender exercise, and
 - (b) the notice is one published under paragraph 35(2), identifying the licence holder as the preferred bidder.
- (3) Paragraph 35(4) applies in relation to a notice published under sub-paragraph (1) of this paragraph as it applies to a notice published under paragraph 35(2). 10
- (4) Where the Authority directs the holder of a transmission licence to act as a transmission owner of last resort pursuant to the conditions of the licence, this Schedule has effect as if – 15
 - (a) the licence holder is the holder of a transmission licence granted as a result of a tender exercise in which the licence holder was the successful bidder, and
 - (b) a notice has been published under paragraph 36 identifying the licence holder as the successful bidder in relation to the tender exercise. 20
- 36B (1) Before directing the holder of a distribution licence to act as a distribution network owner of last resort pursuant to the conditions of the licence, the Authority may publish a notice –
 - (a) stating that it proposes to give the direction, and 25
 - (b) identifying the licence holder to whom it proposes to give the direction.
- (2) Where a notice is published under sub-paragraph (1), this Schedule has effect as if –
 - (a) the licence holder is the preferred bidder in relation to a tender exercise, and 30
 - (b) the notice is one published under paragraph 35(2), identifying the licence holder as the preferred bidder.
- (3) Paragraph 35(4) applies in relation to a notice published under sub-paragraph (1) of this paragraph as it applies to a notice published under paragraph 35(2). 35
- (4) Where the Authority directs the holder of a distribution licence to act as a distribution network owner of last resort pursuant to the conditions of the licence, this Schedule has effect as if –
 - (a) the licence holder is the holder of a distribution licence granted as a result of a tender exercise in which the licence holder was the successful bidder, and 40

- (b) a notice has been published under paragraph 36 identifying the licence holder as the successful bidder in relation to the tender exercise.”
- 24 In paragraph 38(1)–
- (a) at the appropriate place insert– 5
- ““construction, commissioning or operational purposes” means the purposes of performing any functions which the successful bidder has, or may in future have under or by virtue of–
- (a) a relevant licence which has been, or is to be, granted as a result of the tender exercise, 10
- (b) a relevant contract which has been, or is to be, awarded as a result of the tender exercise, or
- (c) any enactment, in the successful bidder’s capacity as holder of the relevant licence or party to the relevant contract;”;
- (b) omit the definitions of “co-ordination licence” and “relevant place”;
- (c) omit the definition of “operational purposes”;
- (d) for the definition of “successful bidder” substitute– 15
- ““successful bidder”, in relation to a tender exercise, has the meaning given by section 6CD(6);”;
- (e) for the definition of “tender exercise” substitute– 20
- ““tender exercise” has the meaning given by section 6CD(3);”.
- 25 (1) In Schedule 4 (powers of licence holders), paragraph 6 is amended as follows. 25
- (2) In sub-paragraph (1)–
- (a) in paragraph (a), after “licence holder” insert “to obtain the right”;
- (b) omit “for the licence holder”.
- (3) After sub-paragraph (7) insert–
- “(7A) A necessary wayleave granted to a licence holder under this paragraph may be transferred to another licence holder.” 30

PART 2

OTHER AMENDMENTS

Utilities Act 2000

- 26 (1) Section 105 of the Utilities Act 2000 (general restrictions on disclosure of information) is amended as follows. 35

(2) In subsection (3), after paragraph (ab) insert—

“(abc) it is made for the purpose of facilitating any functions of the Authority, a delivery body or a contract counterparty (within the meaning of Part 1 of the 1989 Act) under regulations under section 6C of that Act;”.

5

SCHEDULE 13

Section 154

MERGERS OF ENERGY NETWORK ENTERPRISES

PART 1

FURTHER DUTIES OF COMPETITION AND MARKETS AUTHORITY TO MAKE REFERENCES

1 Part 3 of the Enterprise Act 2002 (mergers) is amended as follows. 10

2 After section 68 insert—

“Mergers of energy network enterprises in Great Britain

68A Relevant merger situations involving energy network mergers

(1) For the purposes of this Part, a relevant merger situation involves an energy network merger if two or more of the enterprises that cease to be distinct are energy network enterprises of the same type. 15

(2) For the purposes of this Part, the types of “energy network enterprise” are—

(a) an enterprise holding a licence under section 7 of the Gas Act 1986 (gas transporter); 20

(b) an enterprise holding a licence under section 6(1)(b) of the Electricity Act 1989 (transmission of electricity), except as mentioned in subsection (3);

(c) an enterprise holding a licence under section 6(1)(c) of the Electricity Act 1989 (distribution of electricity), except as mentioned in subsection (3). 25

(3) An enterprise holding a licence under section 6(1)(b) or (c) of the Electricity Act 1989 is not an energy network enterprise if—

(a) the licence was granted following a tender exercise, and

(b) either— 30

(i) the enterprise does not hold any other licence of a type mentioned in subsection (2), or

(ii) the enterprise holds one or more other licences under section 6(1)(b) or (c) of the Electricity Act 1989 and each of those other licences was granted following a tender exercise. 35

-
- (4) The Secretary of State may by regulations amend this section by –
- (a) adding to subsection (2) an enterprise holding a licence under the Gas Act 1986 or the Electricity Act 1989 of a type that is not specified in that subsection;
 - (b) creating an exception in relation to a type of enterprise specified in subsection (2); 5
 - (c) amending or removing an exception that applies in relation to a type of enterprise specified in subsection (2).
- (5) Before making regulations under subsection (4), the Secretary of State must consult – 10
- (a) the Gas and Electricity Markets Authority, and
 - (b) the CMA.
- (6) In this section, “tender exercise” has the same meaning as in section 6CD of the Electricity Act 1989.
- 68B Further duty to make references in relation to completed mergers** 15
- (1) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes that it is or may be the case that –
- (a) a relevant merger situation involving an energy network merger has been created, and 20
 - (b) the creation of that situation has caused, or may be expected to cause, substantial prejudice to the ability of the Gas and Electricity Markets Authority, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the energy network merger; 25
- but this is subject to subsections (2) and (3).
- (2) The CMA may decide not to make a reference under this section if it believes that any relevant customer benefits in relation to the creation of the relevant merger situation outweigh the prejudice mentioned in subsection (1)(b). 30
- (3) The CMA must not make a reference under this section in any circumstances described in section 22(3).
- (4) A reference under this section must, in particular, specify – 35
- (a) the enactment under which it is made, and
 - (b) the date on which it is made.

68C Further duty to make references in relation to anticipated mergers

- (1) The CMA must make a reference to its chair for the constitution of a group under Schedule 4 to the Enterprise and Regulatory Reform Act 2013 if the CMA believes that it is or may be the case that—
- (a) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation involving an energy network merger, and 5
 - (b) the creation of that situation may be expected to cause substantial prejudice to the ability of the Gas and Electricity Markets Authority, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the energy network merger, 10
but this is subject to subsections (2) and (3).
- (2) The CMA may decide not to make a reference under this section if it believes that— 15
- (a) the arrangements concerned are not sufficiently far advanced, or are not sufficiently likely to proceed, to justify the making of a reference, or
 - (b) any relevant customer benefits in relation to the creation of the relevant merger situation concerned outweigh the prejudice mentioned in subsection (1)(b). 20
- (3) The CMA must not make a reference under this section in any circumstances described in section 33(3).
- (4) A reference under this section must, in particular, specify— 25
- (a) the enactment under which it is made, and
 - (b) the date on which it is made.

68D Opinion of the Gas and Electricity Markets Authority

- (1) Before forming a view for the purposes of section 68B(1)(b) or (2) or 68C(1)(b) or (2)(b), the CMA must— 30
- (a) ask the Gas and Electricity Markets Authority to give an opinion, and
 - (b) consider that opinion.
- (2) Where the CMA makes a request under this section, the Gas and Electricity Markets Authority must give its opinion on— 35
- (a) whether and to what extent the creation of the relevant merger situation has prejudiced, or may be expected to prejudice, the Authority's ability, in carrying out its functions under Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989, to make comparisons between energy network enterprises of the type involved in the relevant merger situation, and 40

-
- (b) whether any prejudice is outweighed by any relevant customer benefits in relation to the creation of the relevant merger situation.
- (3) The Gas and Electricity Markets Authority must prepare and publish a statement of the methods it considers should be applied in forming an opinion on the matters mentioned in subsection (1). 5
- (4) The statement must, in particular, set out –
- (a) the criteria to be used for assessing the effect of any particular energy network enterprises ceasing to be distinct enterprises on the Gas and Electricity Market Authority’s ability to make comparisons between such enterprises, and 10
- (b) the relative weight to be given to the criteria.
- (5) Before preparing or altering the statement, the Gas and Electricity Markets Authority must consult – 15
- (a) the Secretary of State,
- (b) the Scottish Ministers,
- (c) the Welsh Ministers,
- (d) the CMA, and
- (e) each energy network enterprise.
- (6) The Gas and Electricity Markets Authority must from time to time – 20
- (a) review the statement, and
- (b) where appropriate, change the statement and publish the new version.
- (7) In forming its opinion under this section, the Gas and Electricity Markets Authority must apply the methods set out in its latest statement. 25

68E Combined references

- (1) In respect of a relevant merger situation involving an energy network merger, the CMA may – 30
- (a) make a reference under both section 22 and section 68B, or
- (b) make a reference under both section 33 and section 68C.
- (2) If the CMA does so –
- (a) the references may be decided by the same group constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013; 35
- (b) the functions of the CMA referred to in section 34C(1) and (2) may be carried out on behalf of the CMA by the same group in relation to both references; and
- (c) the group’s duties under section 38 to prepare and publish a report on each reference may be satisfied by preparing and publishing a single report on both references. 40

68F Modification of this Part

- (1) In relation to—
- (a) a reference, or possible reference, under section 68B, and
 - (b) a reference, or possible reference, under section 68C,
- Chapter 1 of this Part applies with the modifications set out in Schedule 5A. 5
- (2) In Chapters 2 to 5 of this Part, references to a provision of Chapter 1 include that provision as applied by subsection (1) and Schedule 5A.”

- 3 After Schedule 5 insert— 10

“SCHEDULE 5A

Section 68F

ENERGY NETWORK MERGERS AFFECTING COMPARATIVE REGULATION:
MODIFICATION OF CHAPTER 1 OF PART 3

General modifications

- 1 (1) Chapter 1 (other than sections 22 and 33) has effect as if— 15
- (a) references to a reference or possible reference under section 22 were references to a reference or possible reference under section 68B, and
 - (b) references to a reference or possible reference under section 33 were references to a reference or possible reference under section 68C. 20
- (2) The references in sub-paragraph (1) to a reference under a section include a reference treated as made under that section.

Turnover

- 2 Section 23 (relevant merger situations) has effect as if— 25
- (a) in subsection (1), for paragraph (b) there were substituted—
- “(b) the value of the turnover in Great Britain of the enterprise being taken over exceeds £70 million.”; 30
- (b) subsections (2) to (8) were omitted.
- 3 Section 28 (turnover test) has effect as if—
- (a) references to the United Kingdom were to Great Britain;
 - (b) in subsection (5), for “The CMA shall” there were inserted “The CMA and the Gas and Electricity Markets Authority shall each”; 35
 - (c) the reference in subsection (6) to section 23(1)(b) included a reference to that provision as modified by paragraph 2 of this Schedule.

Relevant customer benefits

- 4 Section 30 (relevant customer benefits) has effect as if—
- (a) in subsection (1)(a)(i), for “lessening of competition concerned” there were substituted “prejudice to the Gas and Electricity Markets Authority”; 5
 - (b) in subsections (2)(b) and (3)(b), for “a similar lessening of competition” there were substituted “a similar prejudice to the Gas and Electricity Markets Authority”.

Time limits for decisions about references

- 5 Section 34ZA(1)(a) (time-limits for decisions about references) has effect as if— 10
- (a) the reference to section 22(2) were to section 68B(2);
 - (b) the reference to section 22(3) were to—
 - (i) that provision as applied by section 68B(4), and
 - (ii) section 68B(3); 15
 - (c) the reference to section 33(2) were to section 68C(2);
 - (d) the reference to section 33(3) were to—
 - (i) that provision as applied by section 68C(4), and
 - (ii) section 68C(3).

Questions to be decided in relation to completed mergers 20

- 6 Section 35 (questions to be decided in relation to completed mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”;
 - (b) in subsection (1)(b), for the words from “has resulted” to the end there were substituted “has caused, or may be expected to cause, substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”; 25
 - (c) for subsection (2) there were substituted—
 - “(2) For the purposes of this section there is a prejudicial outcome if there is a situation described in subsection (1)(a) which has, or may be expected to have, the effect described in subsection (1)(b).”; 30
 - (d) in subsection (3), for “an anti-competitive outcome (within the meaning given by subsection (2)(a))” there were substituted “a prejudicial outcome”; 35
 - (e) in subsections (3)(a) and (b) and (4), for the words “lessening” (in the first place they appear) to the end there were substituted “prejudice”. 40

Questions to be decided in relation to anticipated mergers

- 7 Section 36 (questions to be decided in relation to anticipated mergers) has effect as if—
- (a) in subsection (1)(a), after “situation” there were inserted “involving an energy network merger”; 5
 - (b) in subsection (1)(b), for the words from “result” to the end there were substituted “cause substantial prejudice to the ability of the Gas and Electricity Markets Authority to make comparisons between energy network enterprises of the type involved in the energy network merger”; 10
 - (c) after subsection (1) there were inserted—
“(1A) For the purposes of this section there is a prejudicial outcome if there are arrangements described in subsection (1)(a) which may be expected to have the effect described in subsection (1)(b).”; 15
 - (d) in subsection (2), for “an anti-competitive outcome (within the meaning given by section 35(2)(b))” there were substituted “a prejudicial outcome”; 20
 - (e) in subsections (2)(a) and (b) and (3), for the words from “lessening” (in the first place they appear) to the end there were substituted “prejudice”. 20

Duty to remedy effects of completed or anticipated mergers

- 8 Section 41 (duty to remedy effects of completed or anticipated mergers) has effect as if— 25
- (a) in subsection (1), for “an anti-competitive outcome” there were substituted “a prejudicial outcome (within the meaning of section 35(2) or 36(1A))”; 25
 - (b) in subsection (2), for paragraphs (a) and (b) there were substituted “to remedy, mitigate or prevent the substantial prejudice”; 30
 - (c) in subsection (4), for the words from “lessening” to the end there were substituted “prejudice”. 30

PART 2

CONSEQUENTIAL AMENDMENTS OF PART 3 OF ENTERPRISE ACT 2002 35

- 4 Part 3 of the Enterprise Act 2002 is amended as follows.
- 5 (1) Section 22 (duty to make references in relation to completed mergers) is amended as follows.
- (2) In subsection (3)(c), after “section 33” insert “or 68B or 68C”.
 - (3) In subsection (7)(a), after “section 33” insert “, 68B or 68C”. 40

-
- 6 In section 33(3)(c) (circumstances in which references in relation to anticipated mergers may not be made), after “section 22” insert “or 68B or 68C”.
- 7 (1) Section 42 (intervention by Secretary of State in certain public interest cases) is amended as follows. 5
- (2) In subsection (1)(b), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (1)(c), after “33” insert “or subsection (2)(a) of section 68C”.
- (4) In subsection (1)(d) – 10
- (a) for “section 22 or 33” substitute “section 22, 33, 68B or 68C”;
- (b) in sub-paragraph (1), after the second “or (a)” insert “(including those provisions as applied by sections 68B and 68C)”.
- 8 In section 56(2) (competition cases where intervention on public interest grounds ceases), for “or 33” (in both places it occurs) substitute “, 33, 68B or 68C”. 15
- 9 In section 57(1) (duties of CMA and OFCOM to inform Secretary of State), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- 10 In the italic heading at the beginning of Chapter 4, for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- 11 (1) Section 72 (initial enforcement orders: completed or anticipated mergers) is amended as follows. 20
- (2) In subsection (1)(a), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (6)(a) and (d), for “section 22 or 33” substitute “section 22, 33, 68B or 68C”. 25
- 12 (1) Section 73 (undertakings in lieu of references) is amended as follows.
- (2) In the heading, for “22 or 33” substitute “22, 33, 68B or 68C”.
- (3) After subsection (3) insert – 30
- “(3A) Subsection (3B) applies if the CMA considers that it is under a duty to make a reference under section 68B or 68C; and for the purposes of this subsection it must –
- (a) disregard the operation of section 22(3)(b) or 33(3)(b) (as applied by section 68B or 68C), but
- (b) take account of its power under section 68B(2) or 68C(2) to decide not to make such a reference. 35
- (3B) The CMA may, instead of making such a reference and for the purpose of remedying, mitigating or preventing the prejudice to the ability of the Gas and Electricity Markets Authority described in section 68B(1) or 68C(1), accept from such of the parties concerned as it considers appropriate undertakings to take such action as it considers appropriate. 40

- (3C) In proceeding under subsection (3B), the CMA must, in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the prejudice.
- (3D) Before proceeding under subsection (3B), the CMA must—
- (a) ask the Gas and Electricity Markets Authority to give its opinion on the effect of the undertakings offered, and
 - (b) consider the Authority’s opinion.”
- (4) In subsection (4), after “subsection (2)” insert “or (3B)”.
- 13 (1) Section 73A (time-limits for consideration of undertakings) is amended as follows. 10
- (2) In subsection (1), after “73(2)” insert “or (3B)”.
 - (3) In subsection (2), for “those purposes” substitute “the purposes of section 73(2) or (3B)”.
- 14 (1) Section 74 (effect of undertakings under section 73) is amended as follows.
- (2) In subsection (1), for “or 45” substitute “, 45, 68B or 68C”. 15
 - (3) In subsection (5)(a), for “or 33” substitute “, 33, 68B or 68C”.
- 15 In section 77(1)(a) (restrictions on certain dealings: completed mergers), after “22” insert “or 68B”.
- 16 In section 78(1)(a) (restrictions on certain share dealings: anticipated mergers), after “33” insert “or 68C”. 20
- 17 In section 79(1) and (2) (sections 77 and 78: further interpretation provisions), for “or 33” substitute “, 33, 68B or 68C”.
- 18 In section 80(1), (7) and (8) (interim undertakings), for “or 33” substitute “, 33, 68B or 68C”.
- 19 In section 81(1), (7) and (8) (interim orders), for “or 33” substitute “, 33, 68B or 68C”. 25
- 20 In section 82(3) and (4) (final undertakings), for “or 33” substitute “, 33, 68B or 68C”.
- 21 In section 84(5) (final orders), for “or 33” substitute “, 33, 68B or 68C”.
- 22 (1) Section 100 (exceptions to protection given by merger notices) is amended as follows. 30
- (2) In subsection (1), for “or (as the case may be) 33” substitute “, 33, 68B or 68C”.
 - (3) In subsection (2)(a), for “or 33” substitute “, 33, 68B or 68C”.
- 23 In section 104(6) (certain duties of relevant authorities to consult), in the definition of “relevant decision”, in paragraph (a)(i), for “or 33” substitute “, 33, 68B or 68C”. 35
- 24 In section 105(1) (general information duties of CMA), for “or 33” substitute “, 33, 68B or 68C”.

- 25 (1) Section 106 (advice and information about references) is amended as follows.
- (2) In the heading, for “sections 22 and 33” substitute “section 22, 33, 68B or 68C”.
- (3) In subsection (1)(a), for “or 33” substitute “, 33, 68B or 68C”.
- 26 (1) Section 107 (further publicity requirements) is amended as follows. 5
- (2) In subsection (1)(a), for “or 33” substitute “, 33, 68B or 68C”.
- (3) In subsection (1)(aa), for “subsection (2)(b) of section 33” substitute “section 33(2)(b) or 68C(2)(a)”.
- (4) In subsection (1)(b), for “or 33” substitute “, 33, 68B or 68C”.
- (5) In subsection (2)(a), at the end insert “or 68C”. 10
- (6) In subsection (2)(b), for the words from “a reference” to the end substitute “a reference under section 22 or 68B as if it had been made under section 33 or 68C or to treat a reference under section 33 or 68C as if it had been made under section 22 or 68B”.
- 27 In section 109(A1)(a) (attendance of witnesses and production of documents etc), for “or 33” substitute “, 33, 68B or 68C”. 15
- 28 In section 110A(5) and (6) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, 68B or 68C”.
- 29 In section 110B(1) and (2) (restriction on powers to impose penalties under section 110), for “or 33” substitute “, 33, 68B or 68C”. 20
- 30 In section 121(3)(a) (fees), for “or 33” substitute “, 33, 68B or 68C”.
- 31 In section 124(5) (orders and regulations), at the beginning insert “Regulations made by the Secretary of State under section 68A or”.
- 32 In section 127(3) (associated person), for “or 62” substitute “, 62, 68B or 68C”. 25
- 33 (1) The table in section 130 (index of defined expressions) is amended as follows.
- (2) After the entry for “Enactment” insert—
- | | | |
|----------------------------|---------------|--|
| “Energy network enterprise | Section 68A | |
| Energy network merger | Section 68A”. | |
- 30
- (3) In the entry for “Final determination of reference under section 22 or 33”, for “or 33” substitute “, 33, 68B or 68C”.
- (4) In the entry for “References under section 22, 33, 45 or 62”—
- (a) for “or 62” substitute “, 62, 68B or 68C”, and
- (b) after “37(2)” insert “(including as applied by Schedule 5A)”. 35
- (5) In the entry for “The turnover in the United Kingdom of an enterprise”, after “28(2)” insert “(including as applied by Schedule 5A)”.

- 34 (1) Schedule 7 (enforcement regime for public interest and special public interest cases) is amended as follows.
- (2) In paragraph 4(1), for “or 45” substitute “, 45, 68B or 68C”.
- (3) In paragraph 4(2)(a), for “or 33” substitute “, 33, 68B or 68C”.

PART 3

5

CONSEQUENTIAL AMENDMENTS OF OTHER ENACTMENTS

Utilities Act 2000

- 35 In section 105(3) of the Utilities Act 2000 (general restrictions on disclosure of information), in paragraph (azb), after “under” insert “Part 3 of the Enterprise Act 2002 or under”.

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Enterprise and Regulatory Reform Act 2013

- 36 (1) Schedule 4 to the Enterprise and Regulatory Reform Act 2013 is amended as follows.

- (2) In paragraph 35(3) (membership of CMA panel), in the definition of “specialist utility functions”, after paragraph (d) insert—

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“(dza) a reference under section 68B or 68C of the Enterprise Act 2002;”.

- (3) In paragraph 56 (CMA group decision: requirement for two thirds majority), after sub-paragraph (2) insert—

“(2A) Sub-paragraph (2B) applies where a decision of a CMA group under section 35(1) or 36(1) of that Act (as applied by section 68F of, and Schedule 5A to, that Act) that there is, or is likely to be, prejudice of the kind described in section 68B(1)(b) or 68C(1)(b) of that Act is not a qualifying majority decision.

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(2B) The decision of the CMA group is to be treated as a decision under section 35(1) or, as the case may be, section 36(1) of that Act (as applied by section 68F of, and Schedule 5A to, that Act) that there is not, or is not likely to be, prejudice of that kind.”

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SCHEDULE 14

Section 160

MULTI-PURPOSE INTERCONNECTORS: CONSEQUENTIAL AMENDMENTS

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The Electricity Act 1989

- 1 The Electricity Act 1989 is amended as follows.
- 2 In section 3A (principal objective and general duties of Secretary of State and Gas and Electricity Markets Authority)—

- (a) in subsection (1B), after “interconnectors” insert “or multi-purpose interconnectors”;
- (b) in subsection (5)(a), after “interconnectors” insert “or multi-purpose interconnectors”;
- (c) in subsection (5B), in the definition of “electricity-supply emissions”, after “interconnectors” insert “or multi-purpose interconnectors”. 5
- 3 In section 3F(2) (Gas and Electricity Markets Authority to cooperate with Northern Ireland Authority), after “interconnection” insert “and multi-purpose interconnection”.
- 4 In section 7 (conditions of licences: general) – 10
- (a) in subsection (2), after “distribution licence” insert “or MPI licence”;
- (b) in subsection (2A), after “transmission licence” insert “or MPI licence”.
- 5 In section 29 (regulations relating to supply and safety) –
- (a) in subsection (1)(b), after “interconnectors” insert “or multi-purpose interconnectors”; 15
- (b) in subsection (2) –
- (i) in paragraph (b), after “interconnectors” insert “or multi-purpose interconnectors”;
- (ii) in paragraph (c), after “interconnector” insert “or multi-purpose interconnector”. 20
- 6 In section 30 (electrical inspectors), in subsection (2)(a), after “interconnectors” insert “or multi-purpose interconnectors”.
- 7 In section 43 (functions with respect to competition) –
- (a) in subsection (2A)(b), after “interconnectors” insert “or multi-purpose interconnectors”; 25
- (b) in subsection (2C)(b), after “interconnectors” insert “or multi-purpose interconnectors”;
- (c) in subsection (3), after “interconnectors” insert “or multi-purpose interconnectors”. 30
- 8 In subsection 44B (meaning of “section 44B dispute”), in subsection (1)(a), after sub-paragraph (iii) insert –
- “(iia) made against the holder of an MPI licence.”
- 9 In section 56A(4) (scope of power to alter activities requiring licence), after “electricity” insert “, with the operation of a multi-purpose interconnector”. 35
- 10 In section 58(2) (direction restricting the use of certain information), after “interconnectors” insert “or multi-purpose interconnectors”.
- 11 In section 98(1) (provision of statistical information), after “interconnectors” insert “or multi-purpose interconnectors”.

Scotland Act 1998

- 12 In section 90B of the Scotland Act 1998 (the Crown Estate), in subsection (12)(d), after “interconnectors” insert “or multi-purpose interconnectors (within the meaning of Part 1 of the Electricity Act 1989)”.

Utilities Act 2000

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- 13 In section 5A of the Utilities Act 2000 (duty of Authority to carry out impact assessment), in subsection (2) –
- (a) in paragraph (b), after “gas meters)” insert “or in the operation of a multi-purpose interconnector”;
 - (b) in paragraph (c), after “electricity” insert “or the operation of a multi-purpose interconnector”.

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Energy Act 2004

- 14 Section 172 of the Energy Act 2004 (annual report on security of energy supplies) is amended as follows –
- (a) in subsection (2D)(b), after “interconnectors” insert “and multi-purpose interconnectors”;
 - (b) in subsection (4), after ““generation”,” insert “, “multi-purpose interconnector”,”.

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Civil Contingencies Act 2004

- 15 (1) Schedule 1 to the Civil Contingencies Act 2004 (category 1 and 2 responders) is amended as follows.
- (2) In paragraph 19, in sub-paragraph (2) –
- (a) omit the “and” after paragraph (b);
 - (b) after paragraph (c) insert “, and
 - (d) an MPI licence.”
- (3) In paragraph 30, in sub-paragraph (2) –
- (a) omit the “and” after paragraph (b);
 - (b) after paragraph (c) insert “, and
 - (d) an MPI licence.”

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Consumers, Estate Agents and Redress Act 2007

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- 16 In section 42 of the Consumers, Estate Agents and Redress Act 2007 (interpretation of Part 2), in subsection (4), in paragraph (c) of the definition of “electricity licensee” –
- (a) for “or (e)” substitute “, (e) or (ea)”;
 - (b) for “and interconnector licences” substitute “, interconnector licences and MPI licences”.

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Energy Act 2013

- 17 In section 59 of the Energy Act 2013 (suspension etc of emissions limit in exceptional circumstances), in subsection (4)(a), after “interconnector” insert “or multi-purpose interconnector”.

Regulation (EU) 2019/943 of the European Parliament and of the Council of 5th June 2019 on the internal market for electricity (recast) 5

- 18 In Article 63 of Regulation (EU) 2019/943 of the European Parliament and of the Council of 5th June 2019 on the internal market for electricity (recast), in paragraph 4A, for “granted under section 6(1)(e) of the Electricity Act 1989” substitute “or an MPI licence granted under section 6(1)(e) or (ea) respectively of the Electricity Act 1989”. 10

United Kingdom Internal Market Act 2020

- 19 In Part 2 of Schedule 2 to the United Kingdom Internal Market Act 2020 (services to which non-discrimination provisions do not apply), in the entry relating to services connected with the supply or production of electricity, after “interconnector” insert “or multi-purpose interconnector”. 15

SCHEDULE 15

Section 168

HEAT NETWORKS REGULATION

PART 1

INTERPRETATION 20

- 1 In this Schedule—
- “code manager licence” has the meaning given by paragraph 26;
 - “consumer redress order” has the meaning given by paragraph 38;
 - “designated document” has the meaning given by paragraph 23;
 - “domestic heat network consumer” has the meaning given by the regulations; 25
 - “emissions” has the same meaning as in the Climate Change Act 2008 (see section 97 of that Act);
 - “heat network authorisation” has the meaning given by paragraph 13;
 - “heat network consumer” has the meaning given by the regulations; 30
 - “installation and maintenance licence” has the meaning given by paragraph 32;
 - “licensed code manager”, in relation to a designated document, has the meaning given by paragraph 26;
 - “regulated activity” has the meaning given by paragraph 12; 35
 - “the regulations” means regulations under section 168;

- “relevant condition” has the meaning given by paragraph 38;
- “relevant person” has the meaning given by paragraph 38;
- “targeted greenhouse gas” has the same meaning as in Part 1 of the Climate Change Act 2008 (see section 24 of that Act).

PART 2

5

GENERAL PROVISION AS TO THE REGULATOR

Objectives

- 2 (1) The regulations may make provision about the objectives of the Regulator in carrying out its functions under the regulations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide that the principal objective of the Regulator is to protect the interests of existing and future heat network consumers. 10
- (3) The regulations may specify particular interests of existing and future heat network consumers that are to be protected.
- (4) The interests specified may, in particular, include – 15
 - (a) their interests in the reliability of the supply of heating, cooling or hot water by means of relevant heat networks;
 - (b) their interests in the reduction of emissions of targeted greenhouse gases generated by relevant heat networks;
 - (c) their interests in charges for the supply of heating, cooling or hot water by means of relevant heat networks being proportionate; 20
 - (d) their interests in information about services and charges being communicated plainly.

General duties

- 3 (1) The regulations may make provision about the duties of the Regulator in carrying out its functions under the regulations. 25
- (2) The duties may, in particular, include –
 - (a) a duty to carry out its functions in a manner best calculated to further its objectives;
 - (b) a duty to consider, when carrying out its functions, the need to ensure that persons carrying out activities under a heat network authorisation or under an installation and maintenance licence are able to finance obligations imposed by or under the regulations; 30
 - (c) a duty to have regard to the interests of heat network consumers who are in vulnerable circumstances when performing duties imposed by regulations made by virtue of paragraph (a) or (b). 35
- (3) Regulations made by virtue of sub-paragraph (2)(a) may require that the Regulator promote effective competition between persons engaged in, or in commercial activities connected with, the supply of heating, cooling or hot water by means of relevant heat networks. 40

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- 4 (1) The regulations may provide for the Regulator to have regard, in carrying out a function under the regulations, to—
- (a) the interests of existing and future consumers in relation to electricity conveyed by distribution systems or transmission systems (within the meaning of the Electricity Act 1989); 5
 - (b) the interests of existing and future consumers in relation to gas conveyed through pipes (within the meaning of the Gas Act 1986);
 - (c) any interests of existing and future consumers in relation to—
 - (i) communications services and electronic communications apparatus, or 10
 - (ii) water services or sewerage services (within the meaning of the Water Industry Act 1991),
 which are affected by the carrying out of that function.
- (2) The regulations may provide for persons or bodies exercising regulatory functions in those fields to have regard, in carrying out a regulatory function, to the interests of existing or future consumers in relation to the supply of heating, cooling or hot water by means of relevant heat networks. 15

Delegation of functions

- 5 (1) The regulations may provide for the Regulator to delegate functions conferred on the Regulator by the regulations. 20
- (2) The regulations may specify functions which may be delegated only with the consent of the Secretary of State or, as the case may be, the Department.

Monitoring, records and information

- 6 (1) The regulations may require the Regulator to keep under review the carrying on of activities connected with heat networks in the United Kingdom and elsewhere. 25
- (2) The regulations may require the Regulator to monitor such matters relating to the activities regulated by the regulations or the persons who carry on those activities as the regulations may specify.
- (3) The regulations may, for the purposes of enabling the Regulator to perform a duty imposed by regulations made by virtue of sub-paragraph (2), make provision enabling the Regulator to require information to be supplied. 30
- 7 (1) The regulations may require the Regulator to collect information with respect to activities connected with heat networks and the persons who carry on those activities for such purposes as are specified in the regulations. 35
- (2) The regulations may, in particular, require the Regulator to collect information relating to standards of performance achieved by—
- (a) persons who hold a heat network authorisation;
 - (b) licensed code managers;
 - (c) persons who hold an installation and maintenance licence. 40

- 8 (1) The regulations may make provision requiring the Regulator to maintain records.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision requiring the Regulator to maintain records relating to—
- (a) persons whose application for a heat network authorisation, a code manager licence or an installation and maintenance licence has been refused; 5
 - (b) persons whose heat network authorisation, code manager licence or installation and maintenance licence has been revoked.
- (3) The regulations may make provision enabling or requiring the Regulator to provide information from its records to— 10
- (a) the Secretary of State or a person specified by the Secretary of State,
 - (b) the Department or a person specified by the Department, or
 - (c) the Scottish Ministers or a person specified by the Scottish Ministers.
- 9 (1) The regulations may make provision restricting the disclosure of information obtained by the Regulator under or by virtue of the regulations, subject to exceptions specified in the regulations. 15
- (2) The regulations may make provision about the disclosure to the Regulator of information held by other persons or bodies.
- 10 (1) The regulations may make provision for the purpose of securing that a disclosure of information which is authorised or required by the regulations does not contravene the data protection legislation. 20
- (2) In this paragraph, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

Other general provision 25

- 11 (1) The regulations may make other general provision about the Regulator.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about—
- (a) preparing and publishing documents about— 30
 - (i) strategy and policies;
 - (ii) plans for future work;
 - (b) publishing reports annually;
 - (c) publishing financial information in annual accounts;
 - (d) preparing and publishing impact assessments.
- (3) Regulations made by virtue of sub-paragraph (1) may make provision about preparing, issuing, reviewing and revising guidance. 35
- (4) Regulations made by virtue of sub-paragraph (1) may provide for the publication of information and advice for the purpose of promoting the interests of existing and future heat network consumers.

PART 3

HEAT NETWORK AUTHORISATIONS

Prohibition from carrying on regulated activity

- 12 (1) The regulations may prohibit a person from carrying on a regulated activity, except as permitted by virtue of an authorisation conferred under regulations made by virtue of paragraph 13. 5
- (2) In this paragraph, “regulated activity” means an activity relating to a relevant heat network of such description as may be specified in the regulations.

Heat network authorisations 10

- 13 (1) The regulations may provide for the Regulator to confer authorisations (“heat network authorisations”) to carry on one or more regulated activities specified in the authorisation in relation to a particular relevant heat network.
- (2) The regulations may require a person who applies for a heat network authorisation – 15
- (a) to satisfy such conditions relating to the person, the regulated activity or activities in question or the relevant heat network in question as the regulations may specify, and
- (b) to provide such information as the regulations may specify. 20
- (3) The regulations may provide for the Regulator –
- (a) to confer a heat network authorisation;
- (b) to confer a heat network authorisation on a temporary basis;
- (c) to refuse to confer a heat network authorisation.
- (4) The regulations may make provision about the procedure for applying for a heat network authorisation, including provision about – 25
- (a) the form and content of an application,
- (b) the manner in which the application and any accompanying documents are to be submitted to the Regulator;
- (c) the payment of a fee. 30
- (5) Regulations made in relation to England and Wales and Scotland by virtue of sub-paragraph (4) may provide for the Regulator to make provision by regulations about the matters referred to in sub-paragraph (4).
- (6) Regulations made by the Regulator by virtue of sub-paragraph (5) are to be made by statutory instrument. 35
- (7) The regulations may make provision as to the period for which an authorisation may be in force.
- 14 (1) The regulations may make provision about the conditions to be included in heat network authorisations.

- (2) The regulations may, in particular –
- (a) provide for the Regulator to determine and publish conditions to be included in each heat network authorisation or in each heat network authorisation of a particular description;
 - (b) provide for the Secretary of State or, in relation to Northern Ireland, the Department to determine and publish conditions to be included in each heat network authorisation or in each heat network authorisation of a particular description; 5
 - (c) provide for consultation on, and publication of, the conditions proposed to be so determined; 10
 - (d) make provision about the inclusion in a heat network authorisation of conditions that are special to that authorisation;
 - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations.
- (3) The regulations may, in particular, provide for the following sorts of conditions to be included in a heat network authorisation – 15
- (a) conditions about installing and maintaining equipment for measuring, displaying, recording and regulating consumption of heating, cooling and hot water supplied by means of relevant heat networks; 20
 - (b) conditions about –
 - (i) the charges payable by heat network consumers or a description of heat network consumers specified in the regulations,
 - (ii) the billing of heat network consumers; 25
 - (iii) service standards, or
 - (iv) the communication of information about the heat network, the services provided or the terms on which the services are provided;
 - (c) conditions relating to price regulation (including by means of regulation of charges or profits); 30
 - (d) conditions about complying with technical standards (including, in relation to England and Wales and Scotland, technical standards for which provision is made in a designated document);
 - (e) conditions about ensuring the continuity of the supply of heating, cooling and hot water to heat network consumers; 35
 - (f) conditions about limiting emissions of targeted greenhouse gases in relation to relevant heat networks in England or Northern Ireland;
 - (g) conditions about providing information to the Regulator;
 - (h) conditions about the payment of fees to the Regulator, including conditions about the payment of fees – 40
 - (i) in connection with the conferring of an authorisation;
 - (ii) while an authorisation continues to be in force in relation to a person;

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- (i) conditions about making payments to the Regulator of sums relating to the expenses of the Regulator under regulations made by virtue of paragraph 47(2).
- (4) Conditions in regulations made by virtue of sub-paragraph (3)(b)(i) may, in particular – 5
- (a) provide for charges imposed on domestic heat network consumers to be subject to a price cap;
 - (b) require a person who holds a heat network authorisation not to impose on heat network consumers charges that are disproportionate (see paragraph 43). 10
- (5) Conditions in regulations made by virtue of sub-paragraph (3)(b)(ii) may, in particular –
- (a) impose requirements about the bills given to heat network consumers (including requirements about their frequency, accuracy and the use of estimates); 15
 - (b) impose requirements about the information and explanatory material to be provided to heat network consumers;
 - (c) make provision about the charges that may be made in respect of the costs of providing bills and such information and explanatory material. 20

Conditions about technical standards: further provision

- 15 The technical standards for which regulations made by virtue of paragraph 14(3)(d) may make provision include technical standards relating to –
- (a) the design, construction, commissioning, operation or maintenance of a heat network; 25
 - (b) the decommissioning of a heat network;
 - (c) equipment or materials used in the construction, operation or maintenance of a heat network;
 - (d) the competence of persons engaged in the design, construction, commissioning, operation or maintenance of a heat network. 30
- 16 Regulations made in relation to England and Wales and Scotland by virtue of paragraph 14(3)(d) may, in particular, require a person who holds a heat network authorisation –
- (a) to comply with a particular designated document (see paragraph 23); 35
 - (b) to enter into governance arrangements with the person who is from time to time the licensed code manager for that designated document and to comply with those arrangements;
 - (c) to provide funding for the person who is from time to time the licensed code manager for that designated document. 40

Conditions about continuity of supply: further provision

- 17 Conditions in regulations made by virtue of paragraph 14(3)(e) may, in particular, require the holder of a heat network authorisation to enter into and maintain contractual arrangements under which, in circumstances of a description specified in the conditions, one or more other persons are under an obligation to secure the continuity of the supply of heating, cooling or hot water. 5
- 18 Conditions in regulations made by virtue of paragraph 14(3)(e) may, in particular, require the holder of a heat network authorisation, when directed to do so by the Regulator in circumstances of a description specified in the conditions, to carry on a regulated activity in relation to a relevant heat network in the place of another person (see paragraph 45). 10

Modification of heat network authorisations

- 19 (1) The regulations may provide for the modification by the Regulator of— 15
- (a) the conditions of a particular heat network authorisation;
 - (b) conditions that are included in two or more heat network authorisations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular— 20
- (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification;
 - (b) provide for the communication of any modification;
 - (c) provide for the time when any modification takes effect;
 - (d) provide for the Regulator to comply with a direction of the Secretary of State or, in relation to Northern Ireland, the Department not to make a particular modification. 25

Review and revocation of heat network authorisations

- 20 The regulations may provide for the conditions of, or the activities carried out by virtue of, a heat network authorisation to be reviewed by the Regulator at any time while it is in force.
- 21 (1) The regulations may provide for the revocation of a heat network authorisation. 30
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the procedure to be followed by the Regulator when it proposes to revoke the authorisation.

Initial period 35

- 22 (1) The regulations may make provision with respect to persons carrying on a regulated activity in relation to a relevant heat network during a period that— 40
- (a) begins with the day on which any regulations made by virtue of paragraph 12 come into force, and

- (b) ends with a day specified in the regulations.
- (2) The regulations may –
- (a) provide for the period to be prolonged, or to be prolonged as it relates to a description of heat network authorisations, by the Regulator; 5
 - (b) require the consent of the Secretary of State or the Department (as the case may be) to such an alteration.
- (3) Regulations made by virtue of sub-paragraph (1) may –
- (a) provide for a person carrying on a regulated activity in relation to a relevant heat network to be treated as holding a heat network authorisation in relation to that activity and that relevant heat network during the period described in sub-paragraph (1) (or, if applicable, during that period as prolonged by virtue of sub-paragraph (2)); 10
 - (b) make provision as to the conditions of the heat network authorisation treated as conferred on such a person (including provision similar to the provision described in paragraph 14(2)); 15
 - (c) require a person carrying on a regulated activity in relation to a relevant heat network to apply to the Regulator for a heat network authorisation to be conferred on the person by a time specified in or determined under the regulations. 20
- (4) Regulations made by virtue of sub-paragraph (3)(c) may provide for different times for different descriptions of case.

PART 4

CODE GOVERNANCE 25

Designated documents

- 23 (1) In this Part, “designated document” means a document that –
- (a) is maintained in accordance with the conditions of a code manager licence, and
 - (b) is designated for the purposes of this Part by or in accordance with the regulations. 30
- (2) The regulations may –
- (a) designate or provide for the designation of different documents for different purposes;
 - (b) provide for the time from which a designation has effect; 35
 - (c) provide for the modification of a designated document and its reissuing in its modified form;
 - (d) revoke or provide for the revocation of a designated document;
 - (e) provide for a designated document otherwise ceasing to be a designated document. 40

- (3) The regulations may provide for a document that is designated to make provision about technical standards by reference to material (such as standards, specifications or technical requirements) contained in other documents that are published from time to time.
- (4) The regulations may, in particular, make provision about the cases in which the designated document may be modified by the Regulator.

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Prohibition on performing the function of a code manager

- 24 (1) The regulations may, in relation to England and Wales and Scotland, prohibit a person from performing the function of code manager in relation to a designated document, except as permitted by virtue of a code manager licence (see paragraph 26).
- (2) A reference in this Part to a person performing the function of code manager in relation to a designated document is a reference to a person making arrangements, with persons to whom sub-paragraph (3) applies, under which the person is responsible for the governance of the designated document.
- (3) This sub-paragraph applies to the person who holds a heat network authorisation where a condition of the authorisation requires the person to comply with the designated document in question.

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Licensed code managers

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- 25 (1) The regulations may, in relation to England and Wales and Scotland, make provision about selecting a person to be a code manager in relation to a designated document.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about the procedure for selecting a person, including provision for determining which procedure to apply in a particular case.
- (3) Regulations made by virtue of sub-paragraph (2) may include provision for the payment of a fee by a person seeking to be selected to be a code manager.
- (4) Regulations made by virtue of sub-paragraph (2) may provide for the Regulator to make provision by regulations about those matters.
- (5) Regulations made by the Regulator by virtue of sub-paragraph (4) are to be made by statutory instrument.
- 26 (1) The regulations may, in relation to England and Wales and Scotland, provide for the Regulator, where a person is selected to be the code manager in relation to a designated document, to issue a licence (a “code manager licence”) to the person which authorises the person to perform the function of code manager in relation to the designated document.
- (2) The regulations may make provision as to the period for which a licence may be in force.

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- (3) In this Part, references to the licensed code manager, in relation to a designated document, are references to the person who is authorised by a code manager licence to perform the function of code manager in relation to the designated document.
- 27 (1) The regulations may make provision about the contents of a code manager licence. 5
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
- (a) provide for the Regulator to determine and publish conditions to be included in each code manager licence or in each code manager licence of a particular description; 10
 - (b) provide for the Secretary of State to determine and publish conditions to be included in each code manager licence or in each code manager licence of a particular description;
 - (c) provide for consultation on, and publication of, the conditions proposed to be so determined; 15
 - (d) make provision about the inclusion in a code manager licence of conditions that are special to that licence;
 - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide 20 for the following sorts of conditions to be included in a code manager licence –
- (a) conditions about the nature of the governance arrangements that the licensed code manager may enter into with persons who hold a heat network authorisation (see paragraph 16(b)); 25
 - (b) conditions about the content of those governance arrangements, which may include provision about the licensed code manager –
 - (i) modifying the designated document,
 - (ii) monitoring or enforcing compliance with the technical standards for which provision is made in the designated document, or 30
 - (iii) developing guidance relating to the designated document;
 - (c) conditions about providing information to the Regulator;
 - (d) conditions about complying with directions of the Regulator as to matters specified or of a description specified in the code manager licence; 35
 - (e) conditions about the payment of fees to the Regulator, including conditions about the payment of fees –
 - (i) when a code manager licence is first issued;
 - (ii) while a code manager licence continues to be in force in relation to a person. 40
- 28 The regulations may provide for the Regulator to make payments to licensed code managers in respect of their expenses.
- 29 (1) The regulations may provide for the modification by the Regulator of –

- (a) the conditions of a particular code manager licence;
 - (b) conditions that are included in two or more code manager licences.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
- (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification; 5
 - (b) provide for the communication of any modification;
 - (c) provide for the time when any modification takes effect;
 - (d) provide for the Regulator to comply with a direction of the Secretary of State not to make a particular modification.

Review and revocation of code manager licences 10

- 30 The regulations may provide for a code manager licence, or the activities carried out by virtue of a code manager licence, to be reviewed by the Regulator at any time while it is in force.
- 31 (1) The regulations may provide for the revocation of a code manager licence.
- (2) Regulations made by virtue of sub-paragraph (1) may provide for the procedure to be followed by the Regulator when it proposes to revoke the licence. 15

PART 5

INSTALLATION AND MAINTENANCE LICENCES

Installation and maintenance licences 20

- 32 (1) The regulations may provide for the issuing of licences (“installation and maintenance licences”) which authorise the holder of a licence to exercise the rights specified in the licence for purposes relating to the installation or maintenance of relevant heat networks –
- (a) in England and Wales, or 25
 - (b) in Northern Ireland.
- (2) The regulations may require the Regulator to be satisfied before issuing an installation and maintenance licence to a person that the person is an appropriate person to hold such a licence.
- (3) The regulations may require the Regulator, in deciding whether a person is an appropriate person to hold an installation and maintenance licence, to consider such matters as may be specified. 30
- (4) The matters specified may, in particular, relate to the abilities or financial resources of the person applying for a licence or the nature of the business carried on by the person. 35
- (5) The regulations may specify other conditions that are to be satisfied before a licence may be issued.
- (6) The regulations may make provision about the procedure for applying for a licence, including provision about –

- (a) the form and content of an application,
 - (b) the manner in which the application and any accompanying documents are to be submitted to the Regulator, and
 - (c) the payment of a fee.
- (7) Regulations made by virtue of sub-paragraph (6) may provide for the Regulator to make provision by regulations about the matters referred to in sub-paragraph (6), so far as relating to England and Wales. 5
- (8) Regulations made by the Regulator by virtue of sub-paragraph (7) are to be made by statutory instrument.
- (9) The regulations may make provision as to the period for which a licence may be in force. 10
- (10) The regulations may make provision about the transfer of a licence.

Rights that may be conferred

- 33 (1) The regulations must set out the rights relating to land that are capable of being conferred on a person by an installation and maintenance licence. 15
- (2) Regulations made by virtue of sub-paragraph (1) setting out a right may include provision about the restrictions, exceptions or conditions subject to which the right may be exercised.
- (3) The rights set out by regulations made by virtue of sub-paragraph (1) may include— 20
- (a) a right to apply to the Secretary of State or, in relation to Northern Ireland, the Department for authority to make a compulsory acquisition of an easement or other right over land by the creation of a new right for the purpose of installing or maintaining works and apparatus relating to a heat network; 25
 - (b) a right—
 - (i) to install and keep works and apparatus relating to a heat network in, under or over a street or road,
 - (ii) to inspect, maintain, adjust, alter, repair, upgrade, operate or remove such works and apparatus, and 30
 - (iii) to carry out such other works as are required for or incidental to those works,
 subject to such requirements as to notification, manner of working and compensation as may be specified in the regulations;
 - (c) a right— 35
 - (i) to install and keep works and apparatus relating to a heat network in, under or over transport land,
 - (ii) to inspect, maintain, alter, repair, replace and remove such works and apparatus,
 - (iii) a right to carry out any works on the transport land for or in connection with the exercise of a right described in sub-paragraph (i) or (ii), and 40

- (iv) a right to enter the transport land to inspect, maintain, adjust, alter, repair, upgrade, operate or remove the works or apparatus,
subject to such requirements as to notification, compensation, arbitration and alteration of the works and apparatus as may be specified in the regulations; 5
 - (d) a right to undertake works of a specified description without being required to obtain planning permission.
- (4) In this paragraph—
- “road” means a road in Scotland or Northern Ireland and— 10
 - (a) in relation to Scotland, has the same meaning as in Part 4 of the New Roads and Street Works Act 1991;
 - (b) in relation to Northern Ireland, has the same meaning as in the Roads (Northern Ireland) Order 1993 (S.I. 1993/3160 (N.I. 15)); 15
 - “street” means a street in England, Wales or Northern Ireland and—
 - (a) in relation to England and Wales, has the same meaning as in Part 3 of the New Roads and Street Works Act 1991;
 - (b) in relation to Northern Ireland, has the same meaning as in the Street Works (Northern Ireland) Order 1995 (S.I. 1995/3210 (N.I. 19)); 20
 - “transport land” means land which is used wholly or mainly—
 - (a) as a railway, canal or tramway, or
 - (b) in connection with a railway, canal or tramway on the land.

Further provision about installation and maintenance licences 25

- 34 (1) The regulations may make provision about the contents of installation and maintenance licences.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular—
- (a) provide for the Regulator to determine and publish conditions to be included in each installation and maintenance licence or in each installation and maintenance licence of a particular description; 30
 - (b) provide for the Secretary of State or, in relation to Northern Ireland, the Department to determine and publish conditions to be included in each installation and maintenance licence or in each installation and maintenance licence of a particular description; 35
 - (c) provide for consultation on, and publication of, the conditions proposed to be so determined;
 - (d) make provision about the inclusion in a code manager licence of conditions that are special to that licence;
 - (e) make provision about including conditions that meet objectives or other criteria specified in the regulations. 40
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the following sorts of conditions to be included in a licence—

-
- (a) conditions about providing information to the Regulator;
 - (b) conditions about the payment of fees to the Regulator, including conditions about the payment of fees –
 - (i) when a licence is first issued;
 - (ii) while a licence continues to be in force in relation to a person. 5
- 35 (1) The regulations may provide for the modification by the Regulator of –
- (a) the conditions of a particular installation and maintenance licence;
 - (b) conditions that are included in two or more installation and maintenance licences. 10
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular –
- (a) provide for the procedure to be followed by the Regulator when it proposes to make a modification;
 - (b) provide for the communication of any modification;
 - (c) provide for the time when any modification takes effect; 15
 - (d) provide for the Regulator to comply with a direction of the Secretary of State or, in relation to Northern Ireland, the Department not to make a particular modification.

Review and revocation of installation and maintenance licences

- 36 The regulations may provide for the conditions of, or the activities carried out by virtue of, an installation and maintenance licence to be reviewed by the Regulator at any time while it is in force. 20
- 37 (1) The regulations may provide for the revocation of an installation and maintenance licence.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the procedure to be followed by the Regulator when it proposes to revoke the licence. 25

PART 6

ENFORCEMENT OF CONDITIONS

Methods of enforcement 30

- 38 (1) The regulations may make provision about the enforcement of relevant conditions.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for the Regulator –
- (a) in a case where the Regulator is satisfied that a relevant person is contravening or is likely to contravene a relevant condition, to make an order containing such provision as is required for the purpose of securing the person’s compliance with the relevant condition; 35

- (b) to impose a penalty on a relevant person for the contravention of a relevant condition;
 - (c) in relation to England and Wales and Scotland, in a case where the contravention of a relevant condition by a regulated person has caused or is causing one or more consumers to suffer loss or damage or to be caused inconvenience, to make an order (a “consumer redress order”) requiring the person to do such things as appear to the Regulator necessary for the purposes of –
 - (i) remedying the consequences of the contravention, or
 - (ii) preventing the person contravening the relevant condition again in the same or a similar way.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, provide for –
 - (a) the making of an order,
 - (b) the imposition of a penalty, or
 - (c) the making of a consumer redress order,to be excluded if the Regulator considers that it would be more appropriate to proceed under the Competition Act 1998 (see paragraph 42).
- (4) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about the use of more than one method of enforcement.
- (5) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision about enforcement in a case where a person who holds two or more heat network authorisations has contravened or is likely to contravene a relevant condition in those, or some of those, heat network authorisations.
- (6) In this paragraph –
 - “relevant condition” means a condition of –
 - (a) a heat network authorisation,
 - (b) a code manager licence, or
 - (c) an installation and maintenance licence;
 - “relevant person” means –
 - (a) a person who holds a heat network authorisation,
 - (b) a licensed code manager, or
 - (c) a person who holds an installation and maintenance licence.

Final and provisional orders

- 39 Regulations made by virtue of paragraph 38(2)(a) may, in particular –
 - (a) provide for the Regulator to make an order on a provisional basis in such circumstances as may be specified in the regulations;
 - (b) provide for the confirmation of an order made on a provisional basis;
 - (c) make provision about procedure;

- (d) provide for the grounds on which an order may be challenged in legal proceedings, the time within which it may be challenged and the remedies that may be given;
- (e) specify how an order may be enforced (including by providing for non-compliance with an order to be a breach of duty). 5

Penalties

- 40 (1) Regulations made by virtue of paragraph 38(2)(b) may, in particular –
- (a) make provision about the maximum amount that may be imposed by way of penalty;
 - (b) make provision about procedure; 10
 - (c) make provision about challenges to a penalty in legal proceedings (including, in particular, specifying the grounds on which and the time within which a penalty may be challenged and the remedies that may be given);
 - (d) make provision about the payment of interest; 15
 - (e) specify how a penalty (and any interest) may be recovered;
 - (f) require sums received by way of penalty (and interest) to be paid into –
 - (i) the Consolidated Fund, or
 - (ii) in relation to Northern Ireland, the Consolidated Fund of Northern Ireland. 20
- (2) The regulations may provide for –
- (a) publication by the Regulator of a statement of policy with respect to the imposition of penalties and the determination of their amount;
 - (b) revision of the statement of policy. 25

Consumer redress orders

- 41 (1) Regulations made by virtue of paragraph 38(2)(c) may, in particular –
- (a) make provision about the requirements that may be imposed by a consumer redress order, including, in particular, requirements as to – 30
 - (i) paying compensation to affected heat network consumers;
 - (ii) preparing and distributing a written statement about the contravention;
 - (iii) terminating or varying contracts entered into with affected heat network consumers; 35
 - (b) make provision about the maximum amount of compensation that a regulated person may be required to pay;
 - (c) make provision about procedure;
 - (d) make provision about challenges to a consumer redress order in legal proceedings (including, in particular, specifying the grounds on which and the time within which an order may be challenged and the remedies that may be given); 40

- (e) make provision about the payment of interest;
 - (f) specify how a consumer redress order may be enforced.
- (2) The regulations may provide for –
- (a) publication by the Regulator of a statement of policy with respect to the making of consumer redress orders and the determination of the requirements imposed by them; 5
 - (b) revision of the statement of policy.

Functions under Part 1 of the Competition Act 1998 and Part 4 of the Enterprise Act 2002

- 42 (1) The regulations may make provision for the purpose of enabling the Regulator to exercise such functions of the Competition and Markets Authority under Part 1 of the Competition Act 1998, or such descriptions of those functions, as are specified in the regulations. 10
- (2) The regulations may make provision for the purpose of enabling the Regulator to exercise such functions of the Competition and Markets Authority under Part 4 of the Enterprise Act 2002, or such descriptions of those functions, as are specified in the regulations. 15
- (3) Regulations made by virtue of sub-paragraph (1) or (2) may, in particular, make provision –
- (a) about the concurrent exercise of functions by the Regulator and the Competition and Markets Authority; 20
 - (b) for the joint exercise of functions by the Regulator and the Competition and Markets Authority in a particular case;
 - (c) as to the procedure for determining which of the Regulator and the Competition and Markets Authority is to exercise functions in a particular case; 25
 - (d) as to the circumstances in which the exercise of a function by the Regulator or the Competition and Markets Authority precludes the exercise of the function by the other;
 - (e) about assistance that may be given by the Regulator to the Competition and Markets Authority. 30

PART 7

INVESTIGATION

Investigation of charges

- 43 (1) The regulations may make provision about how the Regulator is to determine whether charges payable by domestic heat network consumers for, or in relation to, heating, cooling or hot water supplied by means of a relevant heat network contravene a condition of a heat network authorisation by reason of being disproportionate (see paragraph 14(4)(b)). 35

- (2) The regulations may, in particular, make provision enabling the Regulator to specify from time to time the methods that are to be used by the Regulator to determine whether charges are disproportionate.

Powers to require information etc

- 44 (1) The regulations may, for the purposes of enabling the Regulator to monitor compliance with and to enforce relevant conditions, make provision conferring powers on the Regulator. 5
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, enable the Regulator – 10
- (a) to require information to be supplied;
 - (b) to require copies of documents to be provided;
 - (c) to inspect premises;
 - (d) to inspect and take copies of documents or records;
 - (e) to conduct tests or to require tests to be conducted;
 - (f) to require a person to produce any equipment, document or record and to make available information stored electronically; 15
 - (g) to seize and detain equipment, documents and records.
- (3) Regulations made by virtue of sub-paragraph (1) may, in particular, make provision for the issuing of warrants to enter premises for the purposes of exercising powers conferred by the regulations where conditions specified in the regulations are satisfied. 20
- (4) The regulations may provide for the Regulator to authorise others to exercise powers conferred on it by regulations made by virtue of sub-paragraph (1).

PART 8 25

STEP-IN ARRANGEMENTS

- 45 The regulations may make provision for, or in connection with, securing that the holder of a heat network authorisation (“the new entity”) is able effectively to carry on a regulated activity in relation to a relevant heat network in the place of another person (“the old entity”) when directed to do so by the Regulator under a power conferred by a condition in its heat network authorisation (see paragraph 18). 30
- 46 (1) The regulations may provide for the Regulator to make one or more schemes making such provision as to property, rights and liabilities as is necessary or expedient for the purpose of enabling the new entity to carry on the regulated activity in relation to the relevant heat network in an effective manner. 35
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, authorise a scheme to provide for – 40
- (a) the transfer of property, rights or liabilities;
 - (b) the creation of interests in, or rights in relation to, property;

- (c) the creation of rights and liabilities as between the old entity and the new entity;
 - (d) the modification of interests, rights or liabilities of third parties;
 - (e) the enforcement of a right or liability for whose transfer or creation the scheme provides; 5
 - (f) the entering into of agreements and the execution of instruments for the purposes of, or in connection with, the transfer of property or the transfer or creation of rights or liabilities;
 - (g) the time at which a transfer, creation or modification is to take place;
 - (h) the assessment and payment of compensation. 10
- (3) Regulations made by virtue of sub-paragraph (1) may provide for the scheme –
- (a) to contain incidental, supplementary, consequential, transitional, transitory or saving provision;
 - (b) to make different provision for different purposes. 15
- (4) The regulations may provide for the modification of a scheme.
- 47 (1) The regulations may –
- (a) provide for the old entity to give the Regulator such information and assistance as the Regulator may require for the purposes of, or in connection with, the making or implementation of a scheme; 20
 - (b) provide for the Regulator, for the purposes of, or in connection with, the making or implementation of a scheme, to direct the old entity to take, or to refrain from taking, such steps as are specified in the direction.
- (2) The regulations may provide for the Regulator – 25
- (a) to make payments to the new entity in respect of costs incurred in connection with carrying on the regulated activity in relation to the heat network;
 - (b) to indemnify the new entity in respect of liabilities arising from, or in connection with, carrying on the regulated activity in relation to the heat network. 30

PART 9

SPECIAL ADMINISTRATION REGIME

- 48 The regulations may make provision for, or in connection with, a special administration regime for companies that are holders of heat network authorisations. 35
- 49 (1) The regulations may make provision for a court to make an order (a “heat network administration order”) in relation to a company that is the holder of a heat network authorisation directing that the affairs, business and property of the company are to be managed by a person appointed by the court (referred to in this Part as the heat network administrator of the company). 40

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- (2) The regulations may make provision about the court that has jurisdiction in a particular case.
- (3) The regulations may limit the effect of a heat network administration order applying to a non-GB company or a non-NI company to—
- (a) its affairs and business so far as carried on in Great Britain or Northern Ireland (as the case may be), and 5
 - (b) its property in Great Britain or Northern Ireland (as the case may be).
- 50 (1) The regulations may make provision about the objectives of a heat network administration order and the means by which the objectives may be secured. 10
- (2) The regulations may, in particular, require the heat network administrator to exercise functions so as to achieve the objectives set out in sub-paragraph (3) so far as possible.
- (3) The objectives referred to in sub-paragraph (2) are—
- (a) to secure that the supply of heating, cooling or hot water is continued at the lowest cost which it is reasonably practicable to incur, 15
 - (b) to secure that the company’s relevant heat network is and continues to be maintained and developed as an efficient and economical system, and 20
 - (c) to secure that it becomes unnecessary, by using such means as are allowed by the regulations, for the heat network administration order to remain in force.
- (4) The regulations may make provision about the means that may be used, including— 25
- (a) the rescue as a going concern of the company subject to the heat network administration order;
 - (b) a transfer as a going concern of so much of the undertaking of the company subject to the heat network administration order as is associated with the company’s relevant heat network. 30
- (5) Regulations made by virtue of sub-paragraph (4) may also provide for the heat network administrator to make arrangements for securing that heat network consumers who are supplied with heating, cooling or hot water by the company’s relevant heat network have an alternative supply of heating, cooling or hot water (as the case may be). 35
- (6) The regulations may make provision about—
- (a) the means by which a transfer falling within sub-paragraph (4)(b) may be effected;
 - (b) the circumstances in which the objectives set out in sub-paragraph (3) may or may not be achieved by means of such a transfer. 40
- (7) In this paragraph, “the company’s relevant heat network”, in relation to a company that is the holder of a heat network authorisation, means the relevant heat network to which the authorisation relates.

- 51 (1) The regulations may make provision for applying, with such modifications as appear to the appropriate authority to be appropriate, the provisions mentioned in sub-paragraph (2).
- (2) The provisions referred to in sub-paragraph (1) are—
- (a) sections 156 to 167 of, and Schedules 20 and 21 to, the Energy Act 2004 (special administration regime for energy licensees); 5
 - (b) sections 171 and 196 of the Energy Act 2004 (interpretation), so far as relating to the provisions mentioned in paragraph (a);
 - (c) sections 19 to 33 of, and the Schedule to, the Energy Act (Northern Ireland) 2011 (c. 6 (N.I.)) (special administration regime for protected energy companies); 10
 - (d) section 35 of the Energy Act (Northern Ireland) 2011 (interpretation), so far as relating to the provisions mentioned in paragraph (c).
- 52 In this Part—
- “company” means— 15
- (a) a company registered under the Companies Act 2006, or
 - (b) an unregistered company;
- “heat network administration order” has the meaning given by paragraph 49;
- “heat network administrator” has the meaning given by paragraph 49; 20
- “non-GB company” means a company incorporated outside Great Britain;
- “non-NI company” means a company incorporated outside Northern Ireland; 25
- “unregistered company” means a company that is not registered under the Companies Act 2006.

PART 10

SUPPLY TO PREMISES

- 53 (1) The regulations may make provision about— 30
- (a) offers to connect premises to a relevant heat network, the terms of such offers and acceptance of such an offer;
 - (b) the conduct of holders of heat network authorisations towards heat network consumers or in relation to premises connected or proposed to be connected to a relevant heat network. 35
- (2) The following paragraphs of this Part make further provision about regulations that may be made by virtue of this paragraph.
- 54 The regulations may—
- (a) impose duties, in circumstances specified by the regulations, to make and maintain a connection between a relevant heat network and any premises; 40

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- (b) impose duties as to providing such equipment as may be needed to make the connection function;
 - (c) provide for the procedure to be followed when seeking to have a connection made between a relevant heat network and any premises;
 - (d) provide for persons seeking a connection to premises to pay an amount in respect of expenses incurred in making the connection or in respect of the cost of equipment provided; 5
 - (e) provide for the giving of security for the payment of such an amount in respect of the cost of equipment provided;
 - (f) make provision about the terms upon which a connection is made (including provision for deeming a contract to have been made and for making schemes for determining the terms and conditions to be incorporated in such a contract). 10
- 55 The regulations may –
- (a) make provision as to the meters and other equipment that may be installed for the purposes of making and maintaining a connection between a relevant heat network and any premises; 15
 - (b) impose requirements as to the operation of such meters and other equipment.
- 56 (1) The regulations may – 20
- (a) prohibit the making of a charge where, for the purpose of meeting the needs of a disabled person, a meter or other equipment is moved or replaced;
 - (b) make provision as to the steps that may be taken if payments relating to the supply of heating, cooling or hot water are not made (including provision for removing a connection to a relevant heat network or otherwise preventing the further supply of heating, cooling or hot water); 25
 - (c) make provision as to the arrangements that may apply, and the steps that may be taken, if – 30
 - (i) premises are supplied with heating, cooling or hot water without agreement as to the terms on which the supply is made, or
 - (ii) a connection is made to a relevant heat network, or restored, without authority; 35
 - (d) make provision in connection with securing the rights of a holder of a heat network authorisation as owner of equipment provided by it.
- 57 The regulations may –
- (a) confer powers to enter premises for the purposes of installing, inspecting, repairing, replacing, altering or removing meters or other equipment; 40
 - (b) confer powers to enter premises for the purposes of reading a register on a meter or other equipment;

- (c) make provision for the issuing of warrants to enter premises for the purposes of exercising powers conferred by regulations made by virtue of this paragraph where conditions specified in the regulations are satisfied;
 - (d) make provision as to the persons who may exercise powers conferred by regulations under this paragraph. 5
- 58 The regulations may revoke or amend the Heat Network (Metering and Billing) Regulations 2014 (S.I. 2014/3120).

PART 11

CONSUMER PROTECTION 10

Standards of performance

- 59 (1) The regulations may prescribe such standards of performance in connection with the regulated activities of holders of heat network authorisations, so far as affecting –
- (a) heat network consumers supplied by the relevant heat networks to which their authorisations relate, or 15
 - (b) potential heat network consumers who would be supplied by those relevant heat networks,
- as in the Regulator’s opinion ought to be achieved as regards those persons.
- (2) The regulations may – 20
- (a) specify the circumstances in which the holders of heat network authorisations are to inform persons of rights conferred on them under regulations made by virtue of this paragraph;
 - (b) provide for exemptions from standards of performance;
 - (c) require the holders of heat network authorisations to provide information about their compliance with standards of performance. 25
- (3) The regulations may provide –
- (a) for compensation to be made to persons affected by a failure to meet a standard of performance;
 - (b) for the determination of the amount of compensation. 30
- (4) The regulations may provide for the making of compensation under regulations made by virtue of this paragraph in respect of a failure to meet a standard of performance not to prejudice any other remedy which may be available in respect of the act or omission which constituted the failure.
- (5) Regulations made in relation to England and Wales and Scotland by virtue of sub-paragraphs (1) to (3), may provide for the Regulator to make provision by regulations about the matters referred to in those sub-paragraphs. 35
- (6) The regulations may require that regulations made by the Regulator by virtue of sub-paragraph (5) are made with the consent of the Secretary of State. 40

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- (7) Regulations made by the Regulator by virtue of sub-paragraph (5) are to be made by statutory instrument.
- 60 (1) The regulations may provide for the Regulator, from time to time –
- (a) to determine such standards of overall performance in connection with regulated activities as, in the Regulator’s opinion, ought to be achieved by holders of heat network authorisations; 5
 - (b) to publish those standards.
- (2) The regulations may provide for the Regulator to determine different standards for different descriptions of holders of heat network authorisations. 10
- (3) The regulations may require holders of heat network authorisations to conduct their regulated activities in such a way as can reasonably be expected to lead to compliance with standards set under regulations made by virtue of this paragraph.
- 61 (1) The regulations may make provision about the steps to be taken in connection with prescribing or determining standards of performance under paragraph 59 or 60. 15
- (2) The regulations may, in particular, make provision about –
- (a) conducting research;
 - (b) publishing information about proposals to prescribe or determine standards; 20
 - (c) considering representations about proposals;
 - (d) consulting such persons or descriptions of person as are specified in the regulations.
- Consumer advocacy bodies* 25
- 62 (1) The regulations may provide for Part 1 of the Consumers, Estate Agents and Redress Act 2007 (consumer advocacy bodies) to apply in relation to heat network consumers as it applies in relation to gas or electricity consumers, with such modifications as appear to the appropriate authority to be appropriate. 30
- (2) The regulations may also make provision extending to Northern Ireland or applying in relation to the General Consumer Council for Northern Ireland that corresponds to such provision in Part 1 of the Consumers, Estate Agents and Redress Act 2007 as does not extend to Northern Ireland or does not apply in relation to the General Consumer Council for Northern Ireland (as the case may be). 35
- (3) In this paragraph, “the appropriate authority” means –
- (a) in relation to England and Wales and Scotland, the Secretary of State;
 - (b) in relation to Northern Ireland, the Department. 40

Complaints handling and redress schemes

- 63 The regulations may provide for Part 2 of the Consumers, Estate Agents and Redress Act 2007 (complaints handling and redress schemes) to apply in relation to heat network consumers in England, Wales or Scotland as it applies in relation to gas or electricity consumers, with such modifications as appear to the Secretary of State to be appropriate. 5

Consumer complaints and dispute resolution arrangements: Northern Ireland

- 64 (1) The regulations may, in relation to Northern Ireland, provide for consumer complaints legislation to apply in relation to a heat network consumer or potential heat network consumer as it applies in relation to a customer or potential customer of, or user of electricity or gas supplied by, an authorised supplier, with such modifications as appear to the Department to be appropriate. 10
- (2) In this paragraph, “consumer complaints legislation” means Article 22 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)) and such other provisions of that Order as relate to it. 15
- 65 The regulations may, in relation to Northern Ireland, make provision about the resolution of disputes involving a heat network consumer or potential heat network consumer (including by providing for a scheme under which complaints may be made to, and investigated and determined by, an independent person or may be referred to arbitration). 20

Documents for Citizens Advice, Consumer Scotland and the General Consumer Council for Northern Ireland

- 66 The regulations may make provision requiring the Regulator, where the Regulator publishes a document of a description specified in the regulations, to send a copy of the document to— 25
- (a) Citizens Advice and Consumer Scotland, or
 - (b) the General Consumer Council for Northern Ireland (as the case may be).

PART 12 30

FINANCIAL ARRANGEMENTS

- 67 (1) The regulations may provide for the Regulator to include in the conditions of heat network authorisations provision requiring the payment of sums relating to the expenses incurred by the Secretary of State or the Department in giving financial assistance under regulations made by virtue of paragraph 51 that apply— 35
- (a) any provision of sections 165 to 167 of the Energy Act 2004 (grants, loans, indemnities and guarantees given by the Secretary of State), or

- (b) any provision of sections 28 to 30 of the Energy Act (Northern Ireland) 2011 (grants, loans, indemnities and guarantees given by the Department).
- (2) The regulations may –
- (a) provide for the Secretary of State or the Department to give directions to the Regulator for the purpose of securing that sums relating to those expenses are included in the sums payable by virtue of conditions in heat network authorisations; 5
- (b) provide for the Regulator to comply with any such direction.
- 68 (1) The regulations may provide for the Regulator to include in – 10
- (a) the conditions of a heat network authorisation, or
- (b) the conditions of an installation and maintenance licence, provision requiring the payment of sums relating to the expenses incurred by a person or body in providing, or arranging for the provision of, consumer advocacy and advice in relation to heat network consumers. 15
- (2) The regulations may –
- (a) provide for the Secretary of State or the Department to give directions to the Regulator for the purpose of securing that sums relating to those expenses are included in the sums payable by virtue of conditions in heat network authorisations or installation and maintenance licences; 20
- (b) provide for the Regulator to comply with any such direction.
- 69 The regulations may make provision for the Regulator to pay into the Consolidated Fund or the Consolidated Fund of Northern Ireland sums received in consequence of – 25
- (a) provision made by or under the regulations, or
- (b) a condition of a heat network authorisation, code manager licence or installation and maintenance licence.

PART 13

MISCELLANEOUS AND GENERAL 30

Consultation and cooperation

- 70 The regulations may –
- (a) make provision about consultation and cooperation with such persons or descriptions of person as are specified in the regulations;
- (b) make provision as to the purposes of such cooperation. 35
- 71 The regulations may require the Regulator to assist a public authority that carries out, in relation to Wales or Scotland, functions as regards limiting targeted greenhouse gases in relation to heat networks (including by providing information).

Objectives of the Secretary of State and the Department

- 72 (1) The regulations may make provision about the objectives of the Secretary of State and the Department in carrying out functions under the regulations.
- (2) Regulations made by virtue of sub-paragraph (1) may, in particular, provide that the principal objective of the Secretary of State or the Department is to protect the interests of existing and future heat network consumers. 5
- (3) The regulations may specify particular interests of existing and future heat network consumers that are to be protected.

Offences

- 73 (1) The regulations may provide for the creation of offences. 10
- (2) The regulations may deal with matters relating to such offences, including the provision of defences and evidentiary matters.
- 74 (1) The regulations may provide for an offence created by virtue of regulations made under paragraph 73 to be triable – 15
- (a) only summarily, or
- (b) either summarily or on indictment.
- (2) The regulations must provide for such an offence to be punishable on indictment with a fine.
- (3) The regulations must provide for such an offence to be punishable on summary conviction in England and Wales with a fine. 20
- (4) The regulations must provide for such an offence to be punishable on summary conviction in Scotland or Northern Ireland with a fine not exceeding an amount specified in the regulations.

Crown application

- 75 (1) The regulations may make provision about application to the Crown. 25
- (2) The regulations may also, to the extent that they bind the Crown, restrict or modify the application of the regulations.
- (3) Regulations made by virtue of sub-paragraph (2) may, in particular, provide that a power exercisable in relation to land in which there is a Crown or Duchy interest is subject to a requirement to obtain consent from a person specified in the regulations. 30
- (4) In this paragraph, “Crown or Duchy interest” means – 35
- (a) an interest belonging to Her Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall;
- (b) an interest which belongs to a government department or which is held in trust for Her Majesty for the purposes of a government department;

- (c) an interest which belongs to an office-holder in the Scottish Administration or which is held in trust for Her Majesty for the purposes of the Scottish Administration by such an office-holder.
- (5) This includes, in particular –
- (a) an interest which belongs to Her Majesty in right of Her Majesty's Government in Northern Ireland, and 5
- (b) an interest which belongs to a Northern Ireland department or which is held in trust for Her Majesty for the purposes of a Northern Ireland department.
- (6) A reference in this paragraph to an office-holder in the Scottish Administration is to be construed in accordance with section 126(7) of the Scotland Act 1998. 10

SCHEDULE 16

Section 197

LICENSING OF ACTIVITIES RELATING TO LOAD CONTROL

- 1 The Electricity Act 1989 is amended as follows. 15
- 2 After section 56FB insert –
- “56FBA New licensable activities: load control of energy smart appliances**
- (1) The Secretary of State may by regulations amend this Part so as –
- (a) to provide for one or more activities within subsection (2) to be added to the activities which are licensable activities, 20
or
- (b) where regulations have previously been made under paragraph (a) in relation to an activity –
- (i) to amend the definition of the activity, or
(ii) to provide for the activity to cease to be a licensable activity. 25
- (2) The activities within this subsection are activities connected with –
- (a) the carrying on or facilitating of load control;
(b) the provision of services or facilities related to load control; 30
but not the activities mentioned in subsection (3).
- (3) The activities within this subsection are –
- (a) the provision of relevant electronic communications networks;
(b) the making, selling, importing or distributing of energy smart appliances;
(c) things done by end-users of energy smart appliances (in 35
their capacity as such).

- (4) Regulations under subsection (1)(a) may define activities which are to become licensable activities in any manner the Secretary of State considers appropriate, including –
- (a) by reference to the purpose for which an activity is carried out; and 5
 - (b) by reference to the position of an activity in a sequence of activities necessary to secure a particular outcome.
- (5) Regulations under this section may make consequential, transitional, incidental or supplementary provision, including –
- (a) amendments (or repeals) of any provision of this Act or any other enactment; 10
 - (b) in the case of regulations under subsection (1)(a), provision determining the conditions which are to be standard conditions for the purposes of licences authorising the undertaking of the activities; 15
 - (c) provision modifying any standard conditions of licences.
- (6) Transitional provision under subsection (5) may in particular include provision about persons already undertaking activities that are to become licensable activities by virtue of subsection (1)(a), such as provision – 20
- (a) about the application to such persons of section 4(1);
 - (b) about the granting of licences to such persons.
- (7) Regulations under this section may, in particular, also make provision –
- (a) for licences to authorise the holder to carry out the licensable activities in any area, or only in an area specified in the licence; 25
 - (b) enabling the terms of the licence to be modified so as to extend or restrict the area in which the licence holder may carry on the licensable activities; 30
 - (c) specifying that a licence, and any modification of a licence, must be in writing;
 - (d) for a licence, if not previously revoked, to continue in force for such period as may be specified in or determined by or under the licence; 35
 - (e) conferring functions on the Secretary of State or the Authority.
- (8) In this section, “energy smart appliance”, “load control” and “relevant electronic communications network” have the same meaning as in Part 8 of the Energy Act 2022. 40

56FBB Regulations under section 56FBA

- (1) Before making regulations under section 56FBA, the Secretary of State must consult—
- (a) the Authority, and
 - (b) such other persons as the Secretary of State thinks appropriate. 5
- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The power to make such regulations may not be exercised after the end of a period of seven years beginning with the day on which the first such regulations come into force (for any purpose). 10
- (4) Regulations under section 56FBA may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by resolution of, each House of Parliament.”
- 3 At the end of section 56FC(2) (competitive tenders: definition of “new licensable activities”), insert “or regulations under section 56FBA(1)(a)”. 15
- 4 In section 106(2)(a) (regulations and orders), after “State” insert “(other than regulations under section 56FBA)”.

SCHEDULE 17

Section 219

ENFORCEMENT UNDERTAKINGS 20

Procedure

- 1 (1) The Secretary of State must publish a procedure for entering into enforcement undertakings.
- (2) The Secretary of State may revise the procedure (and must publish any revised procedure). 25
- (3) The Secretary of State must consult any persons the Secretary of State considers appropriate before publishing or revising the procedure.

Variation of terms

- 2 The terms of an enforcement undertaking (including, in particular, the action specified under it and the period so specified within which the action must be taken) may be varied if both parties agree in writing. 30

Compliance certificates

- 3 (1) Where the Secretary of State is satisfied that an enforcement undertaking has been complied with, the Secretary of State must issue a certificate to that effect (referred to in this Schedule as a “compliance certificate”). 35

- (2) A person may at any time apply to the Secretary of State for a compliance certificate.
- (3) The Secretary of State may specify in what form an application under sub-paragraph (2) must be made and what information (if any) must accompany it. 5
- (4) Where an application is made under sub-paragraph (2), the Secretary of State must give the applicant notice in writing of the Secretary of State's decision on the application within 14 days beginning with the day after the day on which the application is received.

Inaccurate, incomplete or misleading information 10

- 4 Where the Secretary of State is satisfied that a person who has given an enforcement undertaking has provided inaccurate, misleading or incomplete information in relation to the undertaking, the Secretary of State may treat the person as having failed to comply with the undertaking (and, if the Secretary of State decides so to treat the person, must by notice revoke any compliance certificate given to the person in respect of the enforcement undertaking). 15

Appeal against decision under paragraph 3 or 4

- 5 (1) An appeal lies to the First-tier Tribunal against a decision of the Secretary of State to refuse an application for a compliance certificate or, in reliance on paragraph 4, to treat the person as having failed to comply with an enforcement undertaking. 20
- (2) The grounds for appeal are that the decision is –
 - (a) based on an error of fact,
 - (b) wrong in law, 25
 - (c) unfair or unreasonable, or
 - (d) wrong for any other reason.
- (3) On an appeal under this paragraph, the First-tier Tribunal may –
 - (a) confirm the Secretary of State's decision or direct that it is not to have effect; 30
 - (b) award costs or, in Scotland, expenses.

SCHEDULE 18

Section 228

PETROLEUM LICENCES: AMENDMENTS TO MODEL CLAUSES

PART 1

PETROLEUM LICENSING (PRODUCTION) (SEAWARD AREAS) REGULATIONS 2008

- | | | |
|---|--|----|
| 1 | In the Petroleum Licensing (Production) (Seaward Areas) Regulations 2008 (S.I. 2008/225), the Schedule (model clauses for seaward area production licences) is amended as follows. | 5 |
| 2 | After clause 40 insert – | |
| | “40A Change in control of Licensee | |
| | (1) This clause applies if – | 10 |
| | (a) the Licensee is a company, or | |
| | (b) where two or more persons are the Licensee, any of those persons is a company, | |
| | and references in this clause to a company are to such a company. | |
| | (2) A change in control of a company is not permitted without the consent of the OGA. | 15 |
| | (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company. | |
| | (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given). | 20 |
| | (5) The OGA may – | |
| | (a) consent to the change in control unconditionally, | 25 |
| | (b) consent to the change in control subject to conditions, or | |
| | (c) refuse consent to the change in control. | |
| | (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision – | |
| | (a) give the company an opportunity to make representations, | 30 |
| | and | |
| | (b) consider any representations that are made. | |
| | (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing. | 35 |
| | (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include – | |

-
- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
- (b) conditions relating to the performance of activities permitted by this licence, and
- (c) financial conditions. 5
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means— 10
- (a) the company,
- (b) the person who (if consent were granted) would take control of the company, and
- (c) if the company and another person or persons are the Licensee, that other person or those other persons.
- (11) For the purposes of this clause, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, modified as specified in clause 40(4).” 15
- 3 (1) Clause 41 (power of revocation) is amended as follows.
- (2) In paragraph (2)— 20
- (a) after sub-paragraph (j) insert—
- “(k) if the Licensee is a company, any breach of a condition subject to which the OGA gave its consent to a change in control of the Licensee (see clause 40A), 25
- (l) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the OGA to that company under section 5D of the Act;”;
- (b) in the closing words, after “(h)” insert “or (k) or (l)”. 30
- (3) Omit paragraphs (3) to (5).
- 4 (1) Clause 42 (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute—
- “(1) This clause applies in a case where two or more persons are the Licensee and— 35
- (a) an event mentioned in clause 41(2)(c), (d), (e), (f) or (h) occurs in relation to one of those persons;
- (b) an event mentioned in clause 41(2)(b) occurs which consists of a breach of clause 40A(2) or (4) in relation to a change in control of one of those persons; 40

- (c) an event mentioned in clause 41(2)(k) occurs in relation to a change in control of one of those persons (see clause 40A); or
 - (d) an event mentioned in clause 41(2)(l) occurs which consists of a failure by one of those persons as mentioned in that provision.” 5
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

PART 2

PETROLEUM LICENSING (EXPLORATION AND PRODUCTION) (LANDWARD AREAS) REGULATIONS 2014 10

- 5 In the Petroleum Licensing (Exploration and Production) (Landward Areas) Regulations 2014 (S.I. 2014/1686), Schedule 2 (model clauses for petroleum exploration and development licences) is amended as follows.
- 6 After clause 40 insert –
- “40A Change in control of Licensee 15**
- (1) This clause applies if –
 - (a) the Licensee is a company, or
 - (b) where two or more persons are the Licensee, any of those persons is a company,
 and references in this clause to a company are to such a company. 20
 - (2) A change in control of a company is not permitted without the consent of the OGA.
 - (3) There is a “change in control” of a company if a person takes control of the company, not having previously been a person who controlled the company. 25
 - (4) If a change in control of a company is contemplated, the company must apply in writing to the OGA for consent at least three months before the date on which it is proposed that the change would occur (if consent were given).
 - (5) The OGA may – 30
 - (a) consent to the change in control unconditionally,
 - (b) consent to the change in control subject to conditions, or
 - (c) refuse consent to the change in control.
 - (6) If the OGA proposes to grant consent subject to any condition or to refuse consent, the OGA must, before making a final decision – 35
 - (a) give the company an opportunity to make representations, and
 - (b) consider any representations that are made.

- (7) The general rule is that the OGA must decide an application within three months of receiving it, but the OGA may delay its decision by notifying the interested parties in writing.
- (8) Conditions as mentioned in paragraph (5)(b) may be imposed on the person taking control of the company (as well as on the company), and may include – 5
- (a) conditions relating to the arrangements for the change in control, including the date by which it must occur,
 - (b) conditions relating to the performance of activities permitted by this licence, and 10
 - (c) financial conditions.
- (9) The OGA’s decision on the application, and any conditions as mentioned in paragraph (5)(b), must be notified in writing to the interested parties.
- (10) In this clause “the interested parties” means – 15
- (a) the company,
 - (b) the person who (if consent were granted) would take control of the company, and
 - (c) if the company and another person or persons are the Licensee, that other person or those other persons. 20
- (11) For the purposes of this clause, “control” of a company is to be construed in accordance with sections 450(2) to (4) and 451(1) to (5) of the Corporation Tax Act 2010, modified as specified in clause 40(4).”
- 7 (1) Clause 41 (power of revocation) is amended as follows. 25
- (2) In paragraph (2) –
- (a) after sub-paragraph (j) insert –
- “(k) if the Licensee is a company, any breach of a condition subject to which the OGA gave its consent to a change in control of the Licensee (see clause 40A), 30
 - (l) if the Licensee is a company, any failure to provide full and accurate information in response to a notice given by the OGA to that company under section 5D of the Act,”; 35
- (b) in the closing words, after “(h)” insert “or (k) or (l)”.
- (3) Omit paragraphs (3) to (5).
- 8 (1) Clause 42 (power of partial revocation) is amended as follows.
- (2) For paragraph (1) substitute –
- “(1) This clause applies in a case where two or more persons are the Licensee and – 40

- (a) an event mentioned in clause 41(2)(c), (d), (e), (f) or (h) occurs in relation to one of those persons;
 - (b) an event mentioned in clause 41(2)(b) occurs which consists of a breach of clause 40A(2) or (4) in relation to a change in control of one of those persons; 5
 - (c) an event mentioned in clause 41(2)(k) occurs in relation to a change in control of one of those persons (see clause 40A); or
 - (d) an event mentioned in clause 41(2)(l) occurs which consists of a failure by one of those persons as mentioned in that provision.” 10
- (3) In paragraph (2), for “or (b)” substitute “, (b), (c) or (d)”.

SCHEDULE 19

Section 233

ACCESSION TO CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR
DAMAGE 15

- 1 In section 13 of the Nuclear Installations Act 1965 (“the 1965 Act”) (exclusion, extension or reduction of compensation in certain cases), in subsection (5A), after “(1ZA),” insert “(1ZAA),”.
- 2 (1) Section 16 of the 1965 Act (satisfaction of claims) is amended as follows.
- (2) In subsection (1ZA) after “or 9” insert “, other than CSC-only claims,”. 20
- (3) After subsection (1ZA) insert—
- “(1ZAA) Notwithstanding subsection (1), if the amount payable by a person in respect of CSC-only claims for compensation under this Act in respect of any one occurrence or event constituting a breach of a duty imposed on that person by section 7, 7B, 8 or 9 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of 300 million special drawing rights, that person is not required to satisfy further claims for compensation.” 25
- (4) In subsection (1ZB)—
- (a) in paragraph (a)(i) after “subsection (1ZA)” insert “or (1ZAA)”, and 30
 - (b) in paragraph (b) after “subsection (1ZA)” insert “or (as the case may be) (1ZAA)”.
- (5) In subsection (1A) for “or (3B)” substitute “, (1ZAA), (3B), (3BA), (3BB), (3BC) or (3BD)”.
- (6) In subsection (3)(a) after “subsection (1)” insert “, (1ZA), (1ZAA), (1ZB)”. 35
- (7) In subsection (3B)—
- (a) after “or 10” insert “, other than CSC-only claims (“non-CSC-only claims”),”,
 - (b) after “further” insert “non-CSC-only”, and

- (c) after “special relevant claims” insert “or CSC claims (or both)”.
- (8) After subsection (3B) insert—
- “(3BA) To the extent that further non-CSC-only claims for compensation are special relevant claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of 1,500 million euros (in the aggregate and apart from interest or costs). 5
- (3BB) To the extent that further non-CSC-only claims for compensation are CSC claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of the aggregate of 700 million euros and the value of the CSC international pooled funds (in the aggregate and apart from interest or costs). 10
- (3BC) To the extent that further non-CSC-only claims for compensation are both special relevant claims and CSC claims, the appropriate authority may be required to satisfy them up to the equivalent in sterling of the aggregate of 1,500 million euros and the value of the CSC international pooled funds (in the aggregate and apart from interest or costs). 15
- (3BD) If the amount payable in respect of CSC-only claims in respect of any one occurrence or event constituting a breach of a duty imposed on a person by section 7, 7B, 8, 9 or 10 reaches, in the aggregate and apart from interest or costs, the equivalent in sterling of the aggregate of 300 million special drawing rights and the value of the CSC international pooled funds, the appropriate authority is not required to satisfy further such claims for compensation. 20
- (3BE) If the CSC international pooled funds are (or will be) reduced by virtue of claims to which subsection (3) applies by 50%, the appropriate authority is not required to satisfy further claims for compensation if that would give rise to a further reduction of those funds except to the extent that those further claims are non-UK CSC claims.” 25 30
- (9) In subsection (3C)(a) after “subsection (3B)” insert “, (3BA), (3BB), (3BC), (3BD) or (3BE)”.
- (10) In subsection (3D)—
- (a) in paragraph (b)(i) and (ii) after “subsection (1ZA)” insert “, (1ZAA),” and 35
- (b) in paragraph (b)(iii) after “subsection (3B)” insert “, (3BA), (3BB), (3BC), (3BD), (3BE)”.
- 3 In section 16A of the 1965 Act (section 16: supplementary), in subsection (7)(b) for “section 18(1A)” substitute “section 16(3BA)”.
- 4 After section 16A of the 1965 Act insert— 40
- “16AA Section 16: CSC-related definitions**
- (1) This section applies for the purposes of section 16.

- (2) A claim for compensation under this Act in the case of a breach of a duty imposed by section 7, 7B, 8, 9 or 10 is a CSC claim if—
- (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (3),
 - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (3), or 5
 - (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (3). 10
- (3) The injury, damage and significant impairment of the environment referred to in subsection (2) are— 15
- (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of the United Kingdom or another CSC territory;
 - (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of the United Kingdom or another CSC territory in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf; 20
 - (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in the United Kingdom or another CSC territory; 25
 - (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of the United Kingdom or another CSC territory; 30
 - (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of the United Kingdom or another CSC territory. 35
- (4) A CSC claim is a CSC-only claim if—
- (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (5), 40
 - (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (5), or 45

- (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (5). 5
- (5) The injury, damage and significant impairment of the environment referred to in subsection (4) are –
- (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of a CSC-only territory; 10
- (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of a CSC-only territory in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf; 15
- (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in a CSC-only territory;
- (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of a CSC-only territory; 20
- (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of a CSC-only territory. 25
- (6) A CSC-only territory is a CSC territory that is not –
- (a) the United Kingdom, or
- (b) any other CSC territory that is a relevant territory in relation to a relevant international agreement other than the CSC. 30
- (7) A CSC claim is a non-UK CSC claim if –
- (a) the injury or damage for which compensation is claimed is such injury or damage as is mentioned in subsection (8),
- (b) the significant impairment of the environment by reference to which compensation is claimed by virtue of section 11A(1) or 11G(1) or paragraph 1 of Schedule 1A is such significant impairment of the environment as is mentioned in subsection (8), or 35
- (c) the preventive measures by reference to which compensation is claimed by virtue of section 11H(1) or (2) are preventive measures relating to such injury, damage or significant impairment of the environment as is mentioned in subsection (8). 40
- (8) The injury, damage and significant impairment of the environment referred to in subsection (7) are – 45

- (a) injury, damage or significant impairment of the environment that is incurred within the territorial limits of a CSC territory other than the United Kingdom;
- (b) injury, damage or significant impairment of the environment that is incurred in or above the exclusive economic zone or on the continental shelf of a CSC territory other than the United Kingdom in connection with the exploitation or exploration of the natural resources of that exclusive economic zone or continental shelf; 5
- (c) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by, or by persons or property on, a ship or aircraft registered in the United Kingdom or another CSC territory; 10
- (d) injury or damage that is incurred in or above the sea outside the territorial limits of any country or territory by a national of the United Kingdom or another CSC territory; 15
- (e) injury or damage that is incurred outside the territorial limits of any country or territory by, or by persons or property on, an artificial island, installation or structure that is subject to the jurisdiction of the United Kingdom or another CSC territory. 20
- (9) In this section –
- “CSC territory” means –
- (a) a country that is a party to the CSC, or
- (b) an overseas territory of such a country, if the CSC applies to the overseas territory, 25
- “national”, in relation to a CSC territory, includes –
- (a) that CSC territory and any part of it,
- (b) a public or private body established in the CSC territory or part of it, whether a body corporate or not, 30
- (c) a partnership established in the CSC territory or part of it, and
- (d) a trust the validity of which is governed by the law of the CSC territory, and 35
- “the CSC” means the Convention on Supplementary Compensation for Nuclear Damage.
- (10) A reference in this section to a national of the United Kingdom is to be construed in accordance with section 16A(8).”
- 5 In section 17 of 1965 Act (jurisdiction, shared liability and foreign judgments), in subsection (3B)(a) and (b) after “section 16(1ZA)” insert “, (1ZAA)”.
- 6 (1) Section 18 of the 1965 Act (general cover for compensation) is amended as follows.

- (2) In subsection (1A) for “1,500 million euros” substitute “the aggregate of 1,500 million euros and the value of the CSC international pooled funds”.
- (3) In subsection (1D)–
- (a) in each of paragraphs (a) and (b) after “section 16(1ZA)” insert “, (1ZAA)”, and 5
 - (b) in paragraph (c) after “section (3B)” insert “, (3BA), (3BB), (3BD), (3BE)”.
- (4) In subsection (4B)(b) after “section 16(1ZA)” insert “or, where relevant, (1ZAA)”.
- 7 After section 25B of the 1965 Act (amounts in euros) insert – 10
- “25C Special drawing rights**
- (1) In this Act “special drawing rights” means special drawing rights as defined by the International Monetary Fund; and for the purpose of determining the equivalent in sterling on any day of a sum expressed in special drawing rights, one special drawing right is to be treated as equal to such a sum in sterling as the International Monetary Fund have fixed as being the equivalent of one special drawing right – 15
- (a) for that day, or
 - (b) if no sum has been so fixed for that day, for the last day before that day for which a sum has been so fixed. 20
- (2) A certificate given by or on behalf of the Treasury stating –
- (a) that a particular sum in sterling has been so fixed for a particular day, or
 - (b) that no sum has been so fixed for a particular day and that a particular sum in sterling has been so fixed for a day which is the last day for which a sum has been so fixed before the particular day, 25
- is to be conclusive evidence of those matters for the purposes of subsection (1) of this section; and a document purporting to be such a certificate is in any proceedings to be received in evidence and, unless the contrary is proved, to be deemed to be such a certificate. 30
- (3) The Treasury may charge a reasonable fee for any certificate given in pursuance of subsection (2) of this section.
- (4) Any fee received by the Treasury by virtue of subsection (3) is to be paid into the Consolidated Fund.” 35
- 8 In section 26 of the 1965 Act (interpretation), in subsection (1) –
- (a) after the definition of “cover period” insert –
- ““CSC claim” has the meaning given by section 16AA;
“CSC international pooled funds” means the funds referred to by Article III.1(b) of the Convention on Supplementary Compensation for Nuclear Damage; 40

- “CSC-only claim” has the meaning given by section 16AA;”;
- (b) in the definition of “event” –
- (i) after “(1ZA),” insert “(1ZAA),” and
 - (ii) after “(3B)” insert “, (3BD)”;
- (c) after the definition of “the Minister” insert –
- ““non-UK CSC claim” has the meaning given by section 16AA;”;
- (d) in the definition of “occurrence” –
- (i) after “(1ZA),” insert “(1ZAA),” and
 - (ii) after “(3B)” insert “, (3BD)”.

Energy Bill [HL]

[AS INTRODUCED]

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Make provision about energy production and security and the regulation of the energy market, including provision about the licensing of carbon dioxide transport and storage; about commercial arrangements for industrial carbon capture and storage and for hydrogen production; about new technology, including low-carbon heat schemes and hydrogen grid trials; about the Independent System Operator and Planner; about gas and electricity industry codes; about heat networks; about energy smart appliances and load control; about the energy performance of premises; about the resilience of the core fuel sector; about offshore energy production, including environmental protection, licensing and decommissioning; about the civil nuclear sector, including the Civil Nuclear Constabulary; and for connected purposes.

Lord Callanan

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