

# Energy Bill [HL]

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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**Clause 11**

LORD CALLANAN

Clause 11, page 12, line 39, leave out “and legacy”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 72, line 25.*

**Clause 32**

LORD CALLANAN

Clause 32, page 30, line 25, leave out from beginning to “provision” and insert “Schedule (Enforcement of obligations of licence holders) makes”

***Member's explanatory statement***

*This amendment, the amendment in the name of Lord Callanan at page 30, line 28, and New Schedule (Enforcement of obligations of licence holders) provide for the enforcement of obligations of licence holders and accordingly omit the powers in clause 32 to make corresponding provision by regulations.*

LORD CALLANAN

Clause 32, page 30, line 28, leave out subsections (2) and (3)

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 30, line 25.*

### Before Schedule 3

LORD CALLANAN

Before Schedule 3, insert the following new Schedule –

“SCHEDULE

Section 32

#### ENFORCEMENT OF OBLIGATIONS OF LICENCE HOLDERS

*Orders for securing compliance with certain provisions*

- 1 (1) Where the economic regulator is satisfied that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, the economic regulator must make an order (a “final order”) containing such provision as appears to the economic regulator to be necessary for the purpose of securing compliance with that condition or requirement (but this sub-paragraph does not apply if the economic regulator is required to by sub-paragraph (2) to make a provisional order in respect of the contravention or likely contravention).
- (2) Where it appears to the economic regulator –
  - (a) that a licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) that it is appropriate to make an order under this sub-paragraph, the economic regulator must (instead of taking steps towards the making of final order) make an order (a “provisional order”) containing such provision as appears to the economic regulator to be necessary for the purpose of securing compliance with that condition or requirement.
- (3) In determining for the purposes of sub-paragraph (2)(b) whether it is appropriate to make a provisional order, the economic regulator must have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything that is likely to be done (or omitted to be done) in contravention of the relevant condition or requirement before a final order may be made.
- (4) The economic regulator must confirm a provisional order, with or without modifications, if –
  - (a) the economic regulator is satisfied that the licence holder is contravening, or is likely to contravene, any relevant condition or requirement, and
  - (b) the provision made by the order (with any modifications) is necessary for the purpose of securing compliance with that condition or requirement.
- (5) If a provisional order is not previously confirmed under sub-paragraph (4), it is to cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.
- (6) Sub-paragraphs (1) to (4) are subject to sub-paragraphs (7) to (9) and paragraph 2.
- (7) The economic regulator –

- (a) must, before making a final order or making or confirming a provisional order, consider whether it would be more appropriate to proceed under the Competition Act 1998 (see section 37);
  - (b) must not make a final order, or make or confirm a provisional order, if the economic regulator considers that it would be more appropriate to proceed under that Act.
- (8) The economic regulator may not make a final order or make or confirm a provisional order if the economic regulator is satisfied that the duties imposed on the economic regulator by section 1 preclude the making or, as the case may be, the confirmation of the order.
- (9) The economic regulator is not required to make a final order or make or confirm a provisional order if it is satisfied –
- (a) that the licence holder has agreed to take and is taking all such steps as appear to the economic regulator to be for the time being appropriate for the purpose of securing or facilitating compliance with the condition or requirement in question, or
  - (b) that the contraventions were, or the apprehended contraventions are, of a trivial nature.
- (10) Where the economic regulator decides that it would be more appropriate to proceed under the Competition Act 1998 or is satisfied as mentioned in sub-paragraphs (8) and (9), the economic regulator must –
- (a) give notice to the licence holder that the economic regulator has so decided or is so satisfied, and
  - (b) publish a copy of the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them.
- (11) A final or provisional order –
- (a) must require the licence holder (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified,
  - (b) must take effect at such time as is determined by or under the order, which must be the earliest practicable time, and
  - (c) may be revoked at any time by the economic regulator.
- (12) In this Schedule –
- “final order” means an order under sub-paragraph (1);
  - “provisional order” means an order under sub-paragraph (2);
  - “relevant condition”, in relation to a licence holder, means any condition of any licence (as defined in section 7) held by that person;
  - “relevant requirement”, in relation to a licence holder, means any requirement imposed on the licence holder by or under this Part.

#### *Procedural requirements*

- 2 (1) Before making a final order or confirming a provisional order, the economic regulator must give notice –

- (a) stating that the economic regulator proposes to make or confirm the order and setting out its effect,
  - (b) stating—
    - (i) the relevant condition or requirement,
    - (ii) the acts or omissions which, in the economic regulator’s opinion, constitute or would constitute contraventions of it, and
    - (iii) the other facts which, in the economic regulator’s opinion, justify the making or confirmation of the order, and
  - (c) specifying the time (which must not be less than 21 days from the date of publication of the notice) within which representations or objections to the proposed order or confirmation of the order may be made, and must consider any representations or objections which are duly made and not withdrawn.
- (2) A notice under sub-paragraph (1) is given—
- (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by sending a copy of the notice, and a copy of the proposed order or of the order proposed to be confirmed, to the licence holder.
- (3) The economic regulator must not make a final order with modifications, or confirm a provisional order with modifications, except with the consent of the licence holder or after complying with the requirements of sub-paragraph (4).
- (4) The requirements are that the economic regulator must—
- (a) give to the licence holder such notice as the economic regulator considers necessary of the economic regulator’s proposal to make or confirm the order with modifications,
  - (b) specify the time (which must not be less than 21 days from the date of the service of the notice) within which representations or objections to the proposed modifications may be made, and
  - (c) consider any representations or objections which are duly made and not withdrawn.
- (5) Where the economic regulator decides to proceed under the Competition Act 1998 in a case falling within paragraph 1(7)(b), the economic regulator must—
- (a) inform the licence holder concerned of that decision, and
  - (b) publish the notice in a manner that the economic regulator thinks appropriate for bringing the notice to the attention of persons likely to be affected by the decision.
- (6) Before revoking a final order or a provisional order which has been confirmed, the economic regulator must give notice—
- (a) stating that the economic regulator proposes to revoke the order and setting out its effect, and
  - (b) specifying the time (which must not be less than 28 days) from the date of publication of the notice within which representations or objections to the proposed revocation may be made,

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

- (7) A notice under sub-paragraph (6) is given—
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by sending a copy of the notice to the licence holder.
- (8) As soon as practicable after a final order is made or a provisional order is made or confirmed, the economic regulator must—
  - (a) serve a copy of the order on the licence holder, and
  - (b) publish such a copy in such manner as the economic regulator considers appropriate for the purpose of bringing the order to the attention of persons likely to be affected by it.

#### *Validity and effect of orders*

- 3 (1) If the licence holder is aggrieved by a final or provisional order and wishes to question its validity on the ground that the making or confirmation of it was not within the powers of paragraph 1, or that any of the requirements of paragraph 2 have not been complied with in relation to it, the licence holder may within 42 days from the date of service on the licence holder of a copy of the order make an application to the court under this paragraph.
- (2) On any such application the court, if satisfied that the making or confirmation of the order was not within those powers or that the interests of the licence holder have been substantially prejudiced by a failure to comply with those requirements, may quash the order or any provision of the order.
- (3) Except as provided by this paragraph, the validity of a final or provisional order may not be questioned by any legal proceedings whatever.
- (4) The obligation to comply with a final or provisional order is a duty owed to any person who may be affected by a contravention of it.
- (5) Where a duty is owed by virtue of sub-paragraph (4) to any person any breach of the duty which causes that person to sustain loss or damage is to be actionable at the suit or instance of that person.
- (6) In any proceedings brought against any person in pursuance of sub-paragraph (5), it is a defence for the person to prove that they took all reasonable steps and exercised all due diligence to avoid contravening the order.
- (7) Without prejudice to any right which any person may have by virtue of sub-paragraph (5) to bring civil proceedings in respect of any contravention or apprehended contravention of a final or provisional order, compliance with any such order is to be enforceable by civil proceedings by the economic regulator for an injunction or interdict or for any other appropriate relief.
- (8) In this paragraph “the court” means—
  - (a) in relation to England and Wales and Northern Ireland, the High Court;

- (b) in relation to Scotland, the Court of Session.

### *Penalties*

- 4 (1) Where the economic regulator is satisfied that a licence holder has contravened or is contravening any relevant condition or requirement, the economic regulator may, subject to paragraph 6, impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case.
- (2) Before imposing a penalty on a licence holder under sub-paragraph (1), the economic regulator must consider whether it would be more appropriate to proceed under the Competition Act 1998.
- (3) The economic regulator must not impose a penalty on a licence holder under sub-paragraph (1) if it considers that it would be more appropriate to proceed under the Competition Act 1998.
- (4) Before imposing a penalty on a licence holder under sub-paragraph (1) the economic regulator must give notice –
- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
  - (b) setting out the relevant condition or requirement;
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which, in the opinion of the economic regulator, justify the imposition of a penalty and the amount of the penalty proposed, and
  - (d) specifying the period (which must not be less than 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (5) Before varying any proposal stated in a notice under sub-paragraph (4)(a) the economic regulator must give notice –
- (a) setting out the proposed variation and the reasons for it, and
  - (b) specifying the period (which must be at least 21 days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,
- and must consider any representations or objections which are duly made and not withdrawn.
- (6) As soon as practicable after imposing a penalty, the economic regulator must give notice –
- (a) stating that it has imposed a penalty on the licence holder and its amount;
  - (b) setting out the relevant condition or requirement in question;
  - (c) specifying the acts or omissions which, in the opinion of the economic regulator, constitute the contravention in question and the other facts which, in the opinion of the economic regulator, justify the imposition of the penalty and its amount, and

- (d) specifying a date, no earlier than the end of the period of 42 days from the date of service of the notice on the licence holder, by which the penalty is required to be paid.
- (7) The licence holder may, within 21 days of the date of service on the licence holder of a notice under sub-paragraph (6), make an application to the economic regulator for it to specify different dates by which different portions of the penalty are to be paid.
- (8) Any notice required to be given under this paragraph must be given –
  - (a) by publishing the notice in such manner as the economic regulator considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them, and
  - (b) by serving a copy of the notice on the licence holder.
- (9) This paragraph is subject to paragraph 10 (maximum amount of penalty that may be imposed).
- (10) Any sums received by the economic regulator by way of penalty under this paragraph must be paid into the Consolidated Fund.

*Statement of policy with respect to penalties*

- 5 (1) The economic regulator must prepare and publish a statement of policy with respect to the imposition of penalties and the determination of their amount.
- (2) In deciding whether to impose a penalty, and in determining the amount of any penalty, in respect of a contravention the economic regulator must have regard to its statement of policy most recently published at the time when the contravention occurred.
- (3) The economic regulator may revise its statement of policy and where it does so must publish the revised statement.
- (4) Publication under this paragraph must be in such manner as the economic regulator considers appropriate for the purpose of bringing the matters contained in the statement of policy to the attention of persons likely to be affected by them.
- (5) The economic regulator must undertake such consultation as it considers appropriate when preparing or revising its statement of policy.

*Time limits on the imposition of penalties*

- 6 (1) Where no final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention later than the end of the period of five years from the time of the contravention, unless before the end of that period –
  - (a) the notice under paragraph 4(4) relating to the penalty is served on the licence holder under paragraph 4(8), or
  - (b) a notice under section 29(2)(b) is served on the licence holder which specifies that the notice is served in connection with a concern on the

part of the economic regulator that the licence holder may be contravening, or may have contravened, a relevant condition or requirement.

- (2) Where a final or provisional order has been made in relation to a contravention, the economic regulator may not impose a penalty in respect of the contravention unless the notice relating to the penalty under paragraph 4(4) was served on the licence holder under paragraph 4(8) –
  - (a) within three months from the confirmation of the provisional order or the making of the final order, or
  - (b) where the provisional order is not confirmed, within six months from the making of the provisional order.

#### *Interest and payment of instalments*

- 7 (1) If the whole or any part of a penalty is not paid by the date by which it is required to be paid, the unpaid balance from time to time is to carry interest at the rate for the time being specified in section 17 of the Judgments Act 1838.
- (2) If an application is made under paragraph 4(7) in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (3) If the economic regulator grants an application under that sub-paragraph in relation to a penalty but any portion of the penalty is not paid by the date specified in relation to it by the economic regulator under that sub-paragraph, the economic regulator may where it considers it appropriate require so much of the penalty as has not already been paid to be paid immediately.

#### *Appeals against penalties*

- 8 (1) If the licence holder on whom a penalty is imposed is aggrieved by –
  - (a) the imposition of the penalty,
  - (b) the amount of the penalty, or
  - (c) the date by which the penalty is required to be paid, or the different dates by which different portions of the penalty are required to be paid,
 the licence holder may make an application to the court under this paragraph.
- (2) An application under sub-paragraph (1) must be made –
  - (a) within 42 days from the date of service on the licence holder of a notice under paragraph 4(6), or
  - (b) where the application relates to a decision of the economic regulator on an application by the licence holder under paragraph 4(7), within 42 days from the date the licence holder is notified of the decision.
- (3) On any such application, where the court considers it appropriate to do so in all the circumstances of the case and is satisfied of one or more of the grounds falling within sub-paragraph (4), the court –
  - (a) may quash the penalty,
  - (b) may substitute a penalty of such lesser amount as the court considers appropriate in all the circumstances of the case, or



- (c) in the case of an application under sub-paragraph (1)(c), may substitute for the date or dates imposed by the economic regulator an alternative date or dates.
- (4) The grounds falling within this sub-paragraph are –
- (a) that the imposition of the penalty was not within the power of the economic regulator under paragraph 4,
  - (b) that any of the requirements of sub-paragraphs (4) to (6) or (8) of paragraph 4 have not been complied with in relation to the imposition of the penalty and the interests of the licence holder have been substantially prejudiced by the non-compliance, or
  - (c) that it was unreasonable of the economic regulator to require the penalty imposed, or any portion of it, to be paid by the date or dates by which it was required to be paid.
- (5) If an application is made under this paragraph in relation to a penalty, the penalty is not required to be paid until the application has been determined.
- (6) Where the court substitutes a penalty of a lesser amount it may require the payment of interest on the substituted penalty at such rate, and from such date, as it considers just and equitable.
- (7) Where the court specifies, as a date by which the penalty or a portion of the penalty is to be paid, a date before the determination of the application under this paragraph it may require the payment of interest on the penalty, or portion, from that date at such rate as it considers just and equitable.
- (8) Except as provided by this paragraph, the validity of a penalty is not to be questioned by any legal proceedings whatever.
- (9) In this paragraph “the court” means –
- (a) in relation to England and Wales or Northern Ireland, the High Court, and
  - (b) in relation to Scotland, the Court of Session.

#### *Recovery of penalties*

- 9 Where a penalty imposed under paragraph 4(1), or any portion of it, has not been paid by the date on which it is required to be paid and –
- (a) no application relating to the penalty has been made under paragraph 8 during the period within which such an application can be made, or
  - (b) an application has been made under that paragraph and determined,
- the economic regulator may recover from the licence holder, as a civil debt due to it, any of the penalty and any interest which has not been paid.

#### *Maximum amount of penalty*

- 10 (1) The maximum amount of penalty that may be imposed on a licence holder in respect of a contravention may not exceed 10 per cent of the licence holder's turnover.

- (2) The Secretary of State may by regulations provide for how a person's turnover is to be determined for the purposes of this paragraph.
- (3) Regulations under sub-paragraph (2) are subject to the affirmative procedure.
- (4) In this paragraph “penalty” means a penalty imposed on a licence holder under paragraph 4.”

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 30, line 25.*

**Clause 57**

LORD CALLANAN

Clause 57, page 52, line 21, at end insert “or (*Enforcement*).”

***Member's explanatory statement***

*This amendment provides for regulations under new clause (*Enforcement*) to be subject to the affirmative procedure.*

**Clause 61**

BARONESS WORTHINGTON

Clause 61, page 55, line 26, leave out from “hydrogen” to end of line 28 and insert “at a rate of 1 kilogram or more of hydrogen per kilogram of greenhouse gas emissions, and which in the opinion of the Secretary of State will contribute to a reduction in emissions of greenhouse gases more efficiently and cost effectively than other activities;”

***Member's explanatory statement***

*This amendment introduces an emissions standard for hydrogen and requires the Government to target support at areas that cannot benefit from other cleaner, more efficient or cost effective de-carbonisation processes.*

**Clause 66**

BARONESS WORTHINGTON

Clause 66, page 59, line 5, leave out paragraph (b)

***Member's explanatory statement***

*This amendment seeks to narrow the definition of “relevant market participants”, limiting the levy to gas bills.*

**Clause 72**

BARONESS WORTHINGTON  
LORD HOWELL OF GUILDFORD

Clause 72, page 63, line 36, leave out from second “counterparty” to end of line 38 and insert “and the eligible low carbon hydrogen producer specified in the notification must, in accordance with provision made by revenue support regulations, contract on—”

***Member's explanatory statement***

*This amendment makes the signing of a revenue support contract or contract for difference (CFD) mandatory for a firm which has successfully bid for it.*

BARONESS WORTHINGTON  
LORD HOWELL OF GUILDFORD

Clause 72, page 64, line 4, leave out from “counterparty” to end of line 6 and insert “and the eligible carbon capture entity specified in the notification must, in accordance with provision made by revenue support regulations, contract on—”

***Member's explanatory statement***

*This amendment makes the signing of a revenue support contract or contract for difference (CFD) mandatory for a firm which has successfully bid for it.*

BARONESS WORTHINGTON  
LORD HOWELL OF GUILDFORD

Clause 72, page 64, line 11, at end insert—

“(2A) In section 14(1) of the Energy Act 2013 (CFD notification: offer to contract on standard terms) for “must, in accordance with provision made by regulations, offer to contract with the eligible generator specified in the notification” substitute “and the eligible generator must, in accordance with provision made by regulations, contract””

***Member's explanatory statement***

*This amendment makes the signing of a revenue support contract or contract for difference (CFD) mandatory for a firm which has successfully bid for it.*

**After Clause 77**

LORD CALLANAN

After Clause 77, insert the following new Clause—

*“Enforcement***Enforcement**

- (1) Revenue support regulations may make provision—
- (a) for requirements imposed under the regulations on—
    - (i) a gas supplier who holds a licence under section 7A(1) of the Gas Act 1986, or
    - (ii) a person who holds a licence under section 7A(2) of that Act (gas shipper),
 to be enforceable by the Gas and Electricity Markets Authority as if they were relevant requirements within the meaning of sections 28 to 30O of that Act;
  - (b) for requirements imposed under the regulations on an electricity supplier who holds a licence under section 6(1)(d) of the Electricity Act 1989 to be enforceable by the Gas and Electricity Markets Authority as if they were relevant requirements within the meaning of Part 1 of that Act;
  - (c) for requirements imposed under the regulations on—
    - (i) an electricity supplier who holds a licence under Article 10(1)(c) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)), or
    - (ii) a gas supplier who holds a licence under Article 8(1)(c) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)),
 to be enforceable by the Northern Ireland Authority for Utility Regulation as if they were relevant requirements within the meaning of Part 6 of the Energy (Northern Ireland) Order 2003 (S.I. 2003/419 (N.I. 6)).
- (2) References in subsection (1) to enforcement include enforcement under the terms of a licence mentioned in any of paragraphs (a) to (c) of that subsection.”

***Member's explanatory statement***

*This amendment enables revenue support regulations to make provision about the enforcement of requirements imposed by the regulations.*

**After Clause 81**

LORD CALLANAN

After Clause 81, insert the following new Clause—

**“Modifications of licences etc**

- (1) The Secretary of State may modify—

- (a) a condition of a particular licence under section 6(1)(b) of the Electricity Act 1989 (transmission licences);
  - (b) the standard conditions incorporated in licences under section 6(1)(b) of the Electricity Act 1989 by virtue of section 8A of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 6(1)(b) of the Electricity Act 1989, or an agreement that gives effect to a document so maintained.
- (2) The Secretary of State may modify –
  - (a) a condition of a particular licence under section 7 of the Gas Act 1986 (licensing of gas transporters);
  - (b) the standard conditions incorporated in licences under section 7 of the Gas Act 1986 by virtue of section 8 of that Act;
  - (c) a document maintained in accordance with the conditions of licences under section 7 of the Gas Act 1986, or an agreement that gives effect to a document so maintained.
- (3) The Secretary of State may modify –
  - (a) a condition of a particular licence under Article 10(1)(b), (bb) or (d) of the Electricity (Northern Ireland) Order 1992 (S.I. 1992/231 (N.I. 1)) (transmission, distribution or SEM operator licences);
  - (b) the standard conditions of licences under Article 10(1)(b), (bb) or (d) of that Order;
  - (c) a document maintained in accordance with the conditions of licences under Article 10(1)(b), (bb) or (d) of that Order, or an agreement that gives effect to a document so maintained.
- (4) The Secretary of State may modify –
  - (a) a condition of a particular licence under Article 8(1)(a) of the Gas (Northern Ireland) Order 1996 (S.I. 1996/275 (N.I. 2)) (licences to convey gas);
  - (b) the standard conditions of licences under Article 8(1)(a) of that Order;
  - (c) a document maintained in accordance with the conditions of licences under Article 8(1)(a) of that Order, or an agreement that gives effect to a document so maintained.
- (5) The powers conferred by subsections (1) to (4) may be exercised only for the purpose of facilitating or supporting enforcement of, and administration in connection with, obligations under regulations within section 66 (including facilitation and support by way of allowing or requiring the provision of services).
- (6) Provision included in a licence, or in a document or agreement relating to licences, by virtue of any power under subsections (1) to (4) may in particular include provision of a kind that may be included in revenue support regulations.
- (7) If under subsection (1) or (2) the Secretary of State makes modifications of the standard conditions of a licence, 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
  - (b) publish the modification.

- (8) If under subsection (3) or (4) the Secretary of State makes modifications of the standard conditions of a licence, the Northern Ireland Authority for Utility Regulation 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
  - (b) publish the modification.
- (9) Before making a modification under this section, the Secretary of State must consult –
  - (a) the holder of any licence being modified, and
  - (b) such other persons as the Secretary of State considers it appropriate to consult.
- (10) Subsection (9) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.”

***Member's explanatory statement***

*This new clause and new clause (Section (Modifications of licences etc): supplementary) confer power to modify certain licence conditions, industry codes etc for purposes related to the enforcement of the hydrogen levy.*

LORD CALLANAN

After Clause 81, insert the following new Clause –

**“Section (Modifications of licences etc): supplementary**

- (1) In this section “relevant power” means a power conferred by any of subsections (1) to (4) of section (Modifications of licences etc).
- (2) Before making modifications under a relevant power, the Secretary of State must lay a draft of the modifications before Parliament.
- (3) If, within the 40-day period, either House of Parliament resolves not to approve the draft, the Secretary of State may not take any further steps in relation to the proposed modifications.
- (4) If no such resolution is made within that period, the Secretary of State may make the modifications in the form of the draft.
- (5) Subsection (3) does not prevent a new draft of proposed modifications being laid before Parliament.
- (6) In this section “40-day period”, in relation to a draft of proposed modifications, means the period of 40 days beginning with the day on which the draft is laid before Parliament (or, if it is not laid before each House of Parliament on the same day, the later of the 2 days on which it is laid).
- (7) For the purposes of calculating the 40-day period, no account is to be taken of any period during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than 4 days.
- (8) A relevant power –

- (a) 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);
  - (b) may be exercised differently in different cases or circumstances;
  - (c) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (9) Provision included in a licence, or in a document or agreement relating to licences, by virtue of a relevant power –
- (a) may make different provision for different cases;
  - (b) need not relate to the activities authorised by the licence.
- (10) The Secretary of State must publish details of any modifications made under a relevant power as soon as reasonably practicable after they are made.
- (11) A modification made under a relevant power 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, Part 1 of the Electricity Act 1989, the Electricity (Northern Ireland) Order 1992 or the Gas (Northern Ireland) Order 1996.
- (12) The power conferred by a relevant power to “modify” (in relation to licence conditions or a document) includes a power to amend, add to or remove, and references to modifications are to be construed accordingly.
- (13) In section 81 of the Utilities Act 2000 (standard conditions of gas licences), in subsection (2), after “Smart Meters Act 2018” insert “or under section (*Modifications of licences etc*) or sections 193 to 195 of the Energy Act 2022”.
- (14) In section 137 of the Energy Act 2004 (new standard conditions for transmission licences), in subsection (3) –
- (a) omit the “or” after paragraph (f);
  - (b) after paragraph (g) insert –
    - “(h) under section (*Modifications of licences etc*) of the Energy Act 2022,.”

***Member's explanatory statement***

*See the explanatory statement for new clause (*Modifications of licences etc*).*

**Clause 82**

LORD CALLANAN

Clause 82, page 71, line 22, leave out subsection (1) and insert –

- “(1) The Secretary of State may by regulations make provision for requiring relevant persons to provide security for the performance of obligations relating to the future abandonment or decommissioning of carbon dioxide-related sites, pipelines or installations.

- (1A) For the purposes of subsection (1) an installation, site or pipeline is “carbon dioxide-related” if it is, or is to be, used for a purpose related to the geological storage, or transportation, of carbon dioxide.
- (1B) In this section references to an installation, site or pipeline include one that is located in, under or over –
- (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).”

***Member's explanatory statement***

*This amendment and the amendments in the name of Lord Callanan at page 71, line 34 and page 71, line 38 revise the scope of the power in subsection (1) so that it is defined in terms of the provision of security for the performance of certain obligations, rather than by reference to the provision of security in respect of specific kinds of costs.*

LORD CALLANAN

Clause 82, page 71, line 28, leave out “licence holder” and insert “person”

***Member's explanatory statement***

*This amendment and the amendment in the name of Lord Callanan at page 71, line 29 enable regulations under clause 81(1) to apply to a person falling within paragraph (a) or (b) of subsection (3).*

LORD CALLANAN

Clause 82, page 71, line 29, leave out “and” and insert “or”

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 71, line 28.*

LORD CALLANAN

Clause 82, page 71, line 34, leave out paragraph (a) and insert –

- “(a) require relevant persons to provide the Secretary of State with estimates of costs that are likely to be incurred in connection with obligations such as are mentioned in subsection (1) (“decommissioning costs”);”

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 71, line 22.*



## LORD CALLANAN

Clause 82, page 71, line 38, leave out from “decommissioning” to “and” in line 39 and insert “costs”

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 71, line 22.*

## LORD CALLANAN

Clause 82, page 72, line 3, leave out from “relevant” to “at” in line 4 and insert “persons to review estimates of decommissioning costs”

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of Lord Callanan at page 71, line 22 and page 71, line 28.*

## LORD CALLANAN

Clause 82, page 72, line 9, leave out “licence holders” and insert “persons”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 28.*

## LORD CALLANAN

Clause 82, page 72, line 15, leave out subsection (5)

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 22.*

## LORD CALLANAN

Clause 82, page 72, line 25, leave out paragraph (a) and insert –

- “(a) requiring that security for the discharge of liabilities in respect of decommissioning costs must be provided by way of a fund (a “decommissioning fund”);”

***Member's explanatory statement***

*This amendment introduces the expression “decommissioning fund” and removes a requirement that regulations must specify the arrangements under which such funds are to be held.*

## LORD CALLANAN

Clause 82, page 72, line 30, leave out from “of” to end of line 31 and insert “decommissioning funds”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 72, line 25.*

## LORD CALLANAN

Clause 82, page 72, line 32, leave out “licence holder” and insert “person”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 28.*

## LORD CALLANAN

Clause 82, page 72, line 36, leave out “an appropriate” and insert “a relevant”

***Member's explanatory statement***

*This amendment and the amendment in the name of Lord Callanan at page 73, line 25 enable certain functions to be conferred on the Oil and Gas Authority (in addition to the Secretary of State and the economic regulator).*

## LORD CALLANAN

Clause 82, page 72, line 37, leave out from “of” to end of line 38 and insert “decommissioning funds”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 72, line 25.*

## LORD CALLANAN

Clause 82, page 72, line 42, leave out subsections (8) and (9) and insert –

- “(8) Regulations under subsection (1) may require the Secretary of State to publish guidance about –
- (a) estimates of decommissioning costs (including factors which it may be appropriate to consider in deciding whether or not to approve estimates of such costs);
  - (b) the structure, accrual and management of decommissioning funds.”

**Member's explanatory statement**

*This amendment and the amendment in the name of Lord Callanan at page 73, line 7 replace the duty to publish guidance with a power to require the Secretary of State to publish guidance and make other changes to the provision about guidance.*

LORD CALLANAN

Clause 82, page 73, line 7, leave out “under or”

**Member's explanatory statement**

*See the amendment in the name of Lord Callanan at page 72, line 42.*

LORD CALLANAN

Clause 82, page 73, leave out lines 10 to 23 and insert—

““decommissioning costs” is to be interpreted in accordance with subsection (4)(a);  
“decommissioning fund” is to be interpreted in accordance with subsection (6)(a);”

**Member's explanatory statement**

*This amendment omits and inserts definitions in consequence of other amendments of clause 82 in the name of Lord Callanan.*

LORD CALLANAN

Clause 82, page 73, leave out lines 25 to 31 and insert—

““geological storage” 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.”

**Member's explanatory statement**

*See the explanatory statement for the amendment in the name of Lord Callanan at page 72, line 36.*

**Clause 83**

LORD CALLANAN

Clause 83, page 73, line 34, leave out “licence holders” and insert “persons”

**Member's explanatory statement**

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 28.*

LORD CALLANAN

Clause 83, page 74, line 29, leave out “licence holder” and insert “person”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 28.*

LORD CALLANAN

Clause 83, page 74, line 36, at end insert “or

- (d) the Storage of Carbon Dioxide (Licensing etc) Regulations (Northern Ireland) (S.R. (N.I.) 2015 No. 387),”

**Clause 84**

LORD CALLANAN

Clause 84, page 75, line 25, leave out “and legacy”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 34.*

LORD CALLANAN

Clause 84, page 75, line 30, leave out “and legacy”

***Member's explanatory statement***

*This amendment and the amendment in the name of Lord Callanan at page 75, line 31 are consequential on the amendment in the name of Lord Callanan at page 71, line 34.*

LORD CALLANAN

Clause 84, page 75, line 31, leave out “82(5)” and insert “82(4)”

***Member's explanatory statement***

*See the explanatory statement for the amendment in the name of Lord Callanan at page 75, line 30.*

**Clause 85**

LORD CALLANAN

Clause 85, page 75, line 36, leave out “carbon storage” and insert “certain”

**Member's explanatory statement**

See the amendment in the name of Lord Callanan at page 76, line 1.

LORD CALLANAN

Clause 85, page 76, line 1, leave out subsection (3)

**Member's explanatory statement**

This amendment and amendments in the name of Lord Callanan at page 75, line 36, page 76, line 33, and page 77, line 9, revert to the label “eligible CCS installation” for certain installations that are eligible for change of use relief.

LORD CALLANAN

Clause 85, page 76, line 4, leave out subsections (5) and (6) and insert –

“(5) Omit subsections (2) and (3).”

**Member's explanatory statement**

This amendment removes a restriction on change of use relief relating to certain installations whose licence was granted by the Scottish Ministers etc.

LORD CALLANAN

Clause 85, page 76, line 7, leave out “After subsection (3)” and insert “Before subsection (4)”

**Member's explanatory statement**

This amendment is consequential on amendment in the name of Lord Callanan at page 76, line 4.

LORD CALLANAN

Clause 85, page 76, line 9, at end insert –

“(b) whether to make a certification under subsection (5)(b).”

**Member's explanatory statement**

This amendment requires the Secretary of State to consult with the Oil and Gas Authority before making a certification of the kind mentioned in amendment in the name of Lord Callanan at page 76, line 33.

LORD CALLANAN

Clause 85, page 76, line 10, leave out subsections (8) and (9) and insert –

“(8) For subsection (4) substitute –

“(4) An eligible CCS installation qualifies for change of use relief if –

- (a) the Secretary of State has given a CCS-related abandonment programme notice to a person in relation to the abandonment of the installation, and
  - (b) the trigger event has occurred in relation to the installation.
- (4A) In subsection (4) “CCS-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).”

***Member's explanatory statement***

*This amendment changes the conditions for change of use relief under section 30A of the Energy Act 2008.*

LORD CALLANAN

Clause 85, page 76, line 33, leave out from beginning to end of line 7 on page 77 and insert—

- “(5) The trigger event occurs in relation to an eligible CCS installation when—
- (a) a decommissioning fund (as defined in section 82(6)) has been established for providing security for the discharge of liabilities in respect of decommissioning costs in relation to the installation, and
  - (b) the Secretary of State certifies by notice in writing (an “approval notice”) that one or more relevant persons have paid into the fund an amount or amounts the total of which is not less than the required amount.
- (5A) In subsection (5)—
- (a) “relevant person” means a person of a description specified in regulations made by the Secretary of State;
  - (b) “the required amount” means an amount determined by the Secretary of State in accordance with regulations made by the Secretary of State.”

***Member's explanatory statement***

*This amendment amends the conditions for qualifying for change of use relief under section 30A of the Energy Act 2008.*

LORD CALLANAN

Clause 85, page 77, line 9, leave out “carbon storage” and insert “CCS”

***Member's explanatory statement***

*See amendment in the name of Lord Callanan at page 76, line 1.*

LORD CALLANAN

Clause 85, page 77, leave out lines 27 and 28

***Member's explanatory statement***

*This amendment leaves out an unnecessary definition.*

LORD CALLANAN

Clause 85, page 77, line 29, leave out “and legacy”

***Member's explanatory statement***

*This amendment is consequential on amendment in the name of Lord Callanan at page 71, line 34.*

LORD CALLANAN

Clause 85, page 77, leave out lines 31 to 35

***Member's explanatory statement***

*This amendment omits definitions in consequence of the amendment in the name of Lord Callanan at page 76, line 10.*

**Clause 86**

LORD CALLANAN

Clause 86, page 78, line 12, at end insert –

“(b) whether to make a certification under subsection (3)(b).”

***Member's explanatory statement***

*This amendment requires the Secretary of State to consult with the Oil and Gas Authority before making a certification of the kind mentioned in Lord Callanan’s amendment at line 78, line 37.*

LORD CALLANAN

Clause 86, page 78, line 13, leave out subsections (6) and (7) and insert –

“(6) For subsection (2) substitute –

“(2) An eligible carbon storage network pipeline qualifies for change of use relief if –

- (a) the Secretary of State has given a CCS-related abandonment programme notice to a person in relation to the abandonment of the pipeline, and
- (b) the trigger event has occurred in relation to the pipeline.

- (2A) In subsection (2) “CCS-related abandonment programme notice” means an abandonment programme notice under section 29 of the 1998 Act given at a time when the pipeline is used, or is to be used wholly or mainly –
- (a) for the purpose of disposing of carbon dioxide by way of geological storage, or
  - (b) as a licensable means of transportation.””

***Member's explanatory statement***

*This amendment changes the conditions for change of use relief under section 30B of the Energy Act 2008.*

LORD CALLANAN

Clause 86, page 78, line 37, leave out from beginning to end of line 12 on page 79 and insert –

- “(3) The trigger event occurs in relation to an eligible carbon storage network pipeline when –
- (a) a decommissioning fund (as defined in section 82(6)) has been established for providing security for the discharge of liabilities in respect of decommissioning costs in relation to the pipeline, and
  - (b) the Secretary of State certifies by notice in writing (an “approval notice”) that one or more relevant persons have paid into the fund an amount or amounts the total of which is not less than the required amount.
- (3A) In subsection (3) –
- (a) “relevant person” means a person of a description specified in regulations made by the Secretary of State;
  - (b) “the required amount” means an amount determined by the Secretary of State in accordance with regulations made by the Secretary of State.”

***Member's explanatory statement***

*This amendment revises the definition of “trigger event” for the purposes of relief under section 30B of the Energy Act 2008.*

LORD CALLANAN

Clause 86, page 79, line 32, leave out “and legacy”

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 71, line 34.*

LORD CALLANAN

Clause 86, page 79, line 33, leave out “82(5)” and insert “82”



***Member's explanatory statement***

*This amendment is consequential on Lord Callanan's amendment at page 73, line 23.*

**Clause 87**

LORD CALLANAN

Clause 87, page 80, line 3, leave out “information” and insert “supplementary”

***Member's explanatory statement***

*This amendment is consequential on Lord Callanan's amendment of clause 87 at page 80, line 30.*

LORD CALLANAN

Clause 87, page 80, line 30, at end insert –

“(2) In section 105 of the Energy Act 2008 (Parliamentary control of subordinate legislation), in subsection (2) omit paragraph (aa).”

***Member's explanatory statement***

*This amendment is consequential on the amendments in the name of Lord Callanan of clauses 85 and 86.*

**Clause 98**

BARONESS WORTHINGTON

Clause 98, page 90, line 32, leave out “may by regulations” and insert “must by regulations, within 12 months of this Act being passed,”

***Member's explanatory statement***

*This amendment requires the Secretary of State to make regulations establishing a low-carbon heat scheme within 12 months of the Bill receiving Royal Assent.*

**Clause 100**

LORD CALLANAN

Clause 100, page 92, line 26, at end insert –

“(2A) In the case of a low-carbon heat target that is imposed by virtue of subsection (1)(c) or (d) on a scheme participant who manufactures heating appliances, the target may be set by reference to heating appliances that are supplied or installed (whether or not by the scheme participant).”

**Member's explanatory statement**

*This amendment makes it clear that a low-carbon heat target set by virtue of clause 100(1)(c) or (d) may be set, in the case of a manufacturer, by reference to heating appliances of the manufacturer that are supplied or installed, whether by the manufacturer or someone else.*

LORD CALLANAN

Clause 100, page 92, line 31, leave out “activity” and insert “appliance”

**Member's explanatory statement**

*This amendment corrects a minor drafting error in subsection (4) of clause 100.*

**Clause 117**

LORD CALLANAN

Clause 117, page 105, line 4, at end insert –

- “(11) In section (*Modifications of licences etc*) of this Act (modifications of licences etc) –
- (a) in subsection (1)(a) for “of the Electricity Act 1989 (transmission licences)” substitute “or (da) of the Electricity Act 1989 (transmission and electricity system operator licences)”;
  - (b) in subsection (1)(c), for “6(1)(b)” substitute “6(1)(b) or (da)”.

**Member's explanatory statement**

*This amendment amends new clause (*Modifications of licences etc*) to take account of clause 117(4).*

**Schedule 11**

LORD CALLANAN

Schedule 11, page 257, line 3, at end insert –

*“Energy Act 2022*

- 12 In section (*Modifications of licences etc*) –
- (a) after subsection (1) insert –
    - “(1A) The Secretary of State may modify –
      - (a) a condition of a particular licence under section 6(1)(g) of the Electricity Act 1989 (code manager licence);
      - (b) a document maintained in accordance with the conditions of licences under section 6(1)(g) of the Electricity Act 1989, or an agreement that gives effect to a document so maintained.”;
    - (b) in subsection (2)(a) –
      - (i) after “7”, insert “or 7AC”;

- (ii) after “transporters” insert “or code manager licence”;
- (c) in subsection (2)(c), after “7” insert “or 7AC”;
- (d) in subsection (7), after “(1)” insert “, (1A)”.

***Member's explanatory statement***

*This amendment amends new clause (Modifications of licences etc) to take account of clauses 136(6) and 137(7).*

**Schedule 12**

LORD CALLANAN

Schedule 12, page 257, line 23, leave out “section 4(1)(ca)” and insert “section 4(3A)(a)”

***Member's explanatory statement***

*This amendment ensures that the cross-reference in new section 6BA(3) of the Electricity Act 1989 (inserted by paragraph 2 of Schedule 12 to the Bill) is to section 4 of that Act as it currently stands.*

LORD CALLANAN

Schedule 12, page 266, line 40, leave out “section 6CB(2)” and insert “section 6CC(2)”

***Member's explanatory statement***

*This amendment fixes an incorrect cross-reference in the amendment made by paragraph 5(5) of Schedule 12 to the Bill to section 6F(8) of the Electricity Act 1989.*

**Schedule 13**

LORD CALLANAN

Schedule 13, page 278, line 39, leave out from “for” to “there” in line 40 and insert ““lessening of competition” (in each place it appears)”

***Member's explanatory statement***

*This amendment, and the other amendments in Lord Callanan’s name in relation to Schedule 13, amend the inserted Schedule 5A for the Enterprise Act 2002 (which modifies Chapter 1 of Part 3 of that Act as it applies in relation to energy network mergers) by bringing the modifications into line with the wider regime for mergers.*

LORD CALLANAN

Schedule 13, page 279, line 20, leave out from “for” to “there” in line 21 and insert ““lessening of competition” (in each place it appears)”

***Member's explanatory statement***

*See the explanatory statement for the amendment in Lord Callanan’s name at page 278, line 39.*

LORD CALLANAN

Schedule 13, page 279, line 29, leave out from “subsection” to end of line 31 and insert “(2)(a) and (b), for “lessening of competition” there were substituted “prejudice””

***Member's explanatory statement***

*See the explanatory statement for the amendment in Lord Callanan's name at page 278, line 39.*

LORD CALLANAN

Schedule 13, page 279, line 32, leave out from “for” to “there” in line 33 and insert ““lessening of competition””

***Member's explanatory statement***

*See the explanatory statement for the amendment in Lord Callanan's name at page 278, line 39.*

**Clause 186**

LORD CALLANAN

Clause 186, page 154, line 18, leave out from “future” to end and insert “flow of electricity into or out of itself”

***Member's explanatory statement***

*This amendment amends the reference to electrical energy in the definition of “energy smart appliance” that applies for the purposes of Part 8.*

LORD CALLANAN

Clause 186, page 154, line 24, after “sent” insert “via a relevant electronic communications network to an energy smart appliance”

***Member's explanatory statement***

*This amendment, together with the amendment in the name of Lord Callanan at page 154, line 25, amends the definition of “load control signal” that applies for the purposes of Part 8 so that it includes a digital communication sent to an energy smart appliance even if the communication is not received by the appliance.*

LORD CALLANAN

Clause 186, page 154, line 25, leave out from “adjustment” to end of line 26

***Member's explanatory statement***

*This amendment is consequential on the amendment in the name of Lord Callanan at page 154, line 24.*

## LORD CALLANAN

Clause 186, page 154, line 26, at end insert –

- “(4A) For the purposes of subsection (2) an adjustment to the flow of electricity into or out of an appliance is made in response to a load control signal whether it is made in response to –
- (a) the sending of the signal, or
  - (b) the sending of the signal and one or more additional factors.”

***Member's explanatory statement***

*This amendment glosses the definition of “energy smart appliance” that applies for the purposes of Part 8 to make it clear that a load control signal may be one of a number of factors in response to which an adjustment is made.*

## Clause 187

## LORD CALLANAN

Clause 187, page 155, line 6, after “cleaning” insert “tableware”

***Member's explanatory statement***

*This amendment, together with the other amendment in the name of Lord Callanan at page 155, line 6, amends the list of purposes of energy smart appliances about which regulations may be made so that it includes appliances for cleaning tableware and washing or drying textiles but not other cleaning appliances.*

## LORD CALLANAN

Clause 187, page 155, line 6, at end insert –

- “(ba) washing or drying textiles;”

***Member's explanatory statement***

*See the explanatory statement to the other amendment in the name of Lord Callanan at page 155, line 6.*

## LORD CALLANAN

Clause 187, page 155, line 7, leave out paragraph (c) and insert –

- “(c) storing energy that –
- (i) was converted from electricity, and
  - (ii) is stored for the purpose of its future reconversion into electricity;”

***Member's explanatory statement***

*This amendment amends the list referred to in the amendment in the name of Lord Callanan at page 155, line 6 so as to refer to electricity storage using language consistent with that used in clause 162 of the Bill.*

## LORD CALLANAN

Clause 187, page 155, line 8, leave out paragraph (d) and insert –

“(d) heating;”

***Member's explanatory statement***

*This amendment amends the list referred to in the amendment in the name of Lord Callanan at page 155, line 6 to remove unnecessary words from the entry referring to heating.*

## BARONESS RANDEKSON

Clause 187, page 155, line 22, at end insert –

“(e) consumers are easily able to operate the smart appliances and use them at times of the day that are appropriate for their individual need and maximise their ability to utilise green energy.”

***Member's explanatory statement***

*This amendment seeks to ensure that consumers are able to easily operate smart appliances and are not locked into using them at times that may not maximise their individual ability to utilise green energy.*

## LORD CALLANAN

Clause 187, page 155, line 30, at end insert –

“(ca) make provision about the recall of appliances to prevent, or in response to, non-compliance with the regulations;”

***Member's explanatory statement***

*This amendment enables energy smart regulations to make provision about the recall of appliances.*

## LORD CALLANAN

Clause 187, page 155, line 30, at end insert –

“(cb) make provision for the Secretary of State to issue guidance about prohibitions or requirements imposed by or under the regulations;”

***Member's explanatory statement***

*This amendment enables energy smart regulations to provide for the Secretary of State to issue guidance about prohibitions or requirements imposed by or under the regulations.*

## LORD CALLANAN

Clause 187, page 155, line 33, leave out “selling” and insert “supplying”

**Member's explanatory statement**

*This amendment amends the list of persons on whom energy smart regulations may impose prohibitions or requirements so as to include persons who supply energy smart appliances by means including but not limited to selling them.*

**Clause 188**

LORD CALLANAN

Clause 188, page 156, line 24, at end insert –

“(3A) The reference in subsection (3)(b)(ii) to electrical heating appliances includes a reference to heat pumps.”

**Member's explanatory statement**

*This amendment glosses the definition of “relevant appliance” so as to clarify that heat pumps without the energy smart function, or that are not compatible with the energy smart function of another appliance, are relevant appliances about which provision by virtue of clause 187(4)(c) may be made.*

**Clause 189**

LORD CALLANAN

Clause 189, page 156, line 41, at end insert –

“(iii) take specified steps to remedy non-compliance;”

**Member's explanatory statement**

*This amendment enables energy smart regulations to make provision about steps that must be taken to remedy non-compliance (without an enforcement authority imposing a requirement under provision made by virtue of clause 189(5)).*

LORD CALLANAN

Clause 189, page 156, line 41, at end insert –

“(ba) requiring persons to supply evidence of their compliance to enforcement authorities;”

**Member's explanatory statement**

*This amendment enables energy smart regulations to make provision requiring persons to supply evidence of their compliance to enforcement authorities.*

## LORD CALLANAN

Clause 189, page 157, line 4, at end insert –

- “(ea) conferring powers to enable the testing of energy smart appliances by enforcement authorities, including powers to require the provision of sample appliances and powers to make test purchases;”

***Member's explanatory statement***

*This amendment enables energy smart regulations to confer the powers necessary to enable enforcement authorities to test energy smart appliances.*

## LORD CALLANAN

Clause 189, page 157, line 23, at end insert –

- “(d) recall appliances to prevent, or in response to, non-compliance with energy smart regulations.”

***Member's explanatory statement***

*This amendment enables energy smart regulations to allow enforcement authorities, by written notice, to require persons to recall energy smart appliances.*

## LORD CALLANAN

Clause 189, page 157, line 32, at end insert –

- “(7A) Energy smart regulations may make provision to enable an enforcement authority to accept an enforcement undertaking from a person where the authority has reasonable grounds to suspect that the person has failed to comply with any prohibition or requirement imposed by or under the regulations.
- (7B) An “enforcement undertaking” is an undertaking to take such action to secure compliance with the regulations as may be specified in the undertaking within such period as may be so specified.
- (7C) Provision made by virtue of subsection (7A) must include provision that unless the person from whom the undertaking was accepted has failed to comply with the undertaking or any part of it –
- (a) that person may not at any time be convicted of an offence in respect of the act or omission to which the undertaking relates, and
  - (b) the enforcement authority may not impose on that person any penalty which it would otherwise have power to impose under the regulations.
- (7D) Provision made by virtue of subsection (7A) may include any provision of a kind mentioned in section 50(5) of the Regulatory Enforcement and Sanctions Act 2008.”

***Member's explanatory statement***

*This amendment enables energy smart regulations to make provision enabling an enforcement authority to accept enforcement undertakings.*



## LORD CALLANAN

Clause 189, page 157, line 35, at end insert –

- “(9) Energy smart regulations may provide for an enforcement authority to issue guidance about the enforcement of the regulations and the exercise by the authority of its functions under the regulations.”

***Member's explanatory statement***

*This amendment enables energy smart regulations to provide for an enforcement authority to issue guidance about the enforcement of the regulations and about the exercise of its functions.*

## Clause 192

## LORD CALLANAN

Clause 192, page 159, line 12, at end insert –

- “(1A) Energy smart regulations may make provision about the sharing of information between an enforcement authority and the GEMA for the purposes of their functions in relation to energy smart appliances and load control.”

***Member's explanatory statement***

*This amendment enables energy smart regulations to make provision to facilitate information sharing between any enforcement authority designated under the regulations and the Gas and Electricity Markets Authority (and vice versa).*

## Clause 196

## LORD CALLANAN

Clause 196, page 162, line 23, leave out subsection (8)

***Member's explanatory statement***

*This amendment omits a provision that is superseded by new clause (Section (Modifications of licences etc): supplementary).*

## Schedule 16

## LORD CALLANAN

Schedule 16, page 315, line 11, after “enactment” insert “, including any enactment comprised in, or an instrument made under, an Act of the Scottish Parliament”

***Member's explanatory statement***

*This amendment enables provision made by regulations under section 56FBA of the Electricity Act 1989 (inserted by the Bill) to include amendments to Acts of the Scottish Parliament and Scottish Statutory Instruments (which are not within the meaning of “enactment” given by the Interpretation Act 1978).*

**After Clause 201**

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“PART 9A**

## ENERGY SAVINGS OPPORTUNITY SCHEMES

**Energy savings opportunity schemes**

- (1) The Secretary of State may by regulations (“ESOS regulations”) make provision for the establishment and operation of one or more energy savings opportunity schemes.
- (2) An “energy savings opportunity scheme” is a scheme under which obligations are imposed on undertakings to which the scheme applies for one or more of the ESOS purposes.
- (3) The ESOS purposes are –
  - (a) enabling or requiring the energy consumption for which an undertaking is responsible, or the greenhouse gas emissions resulting from that consumption, to be assessed, audited, reported and published;
  - (b) enabling or requiring possible energy savings or emissions reductions to be identified and recommended;
  - (c) enabling or requiring the costs and benefits of possible energy savings or emissions reductions to be assessed;
  - (d) encouraging or requiring undertakings to produce plans or set targets for achieving energy savings or emissions reductions;
  - (e) encouraging or requiring undertakings to take action for the purpose of achieving energy savings or emissions reductions;
  - (f) encouraging or requiring undertakings to achieve energy savings or emissions reductions.
- (4) An energy saving is a reduction in the energy consumption for which an undertaking is responsible.
- (5) An emissions reduction is a reduction in the greenhouse gas emissions that result from the energy consumption for which an undertaking is responsible (whether or not that consumption is also reduced).
- (6) ESOS regulations may make provision about determining –
  - (a) the energy consumption for which an undertaking is responsible;
  - (b) the greenhouse gas emissions resulting from that consumption.
- (7) ESOS regulations may –
  - (a) impose requirements on any person;
  - (b) confer functions on any person;
  - (c) provide for a person to exercise discretion in dealing with any matter.

- (8) The provision made by this Part is without prejudice to the generality of subsection (1).
- (9) For the purposes of this Part—
  - (a) the scheme established by the Energy Savings Opportunity Scheme Regulations 2014 (S.I. 2014/1643) is to be treated as having been established by provision made under subsection (1);
  - (b) a reference to a scheme administrator includes a reference to a compliance body within the meaning given by those Regulations.”

***Member's explanatory statement***

*This new clause is the first clause in a new Part 9A of the Bill (also containing the 12 other new clauses inserted after clause 201 by amendments in the name of Lord Callanan) making provision about Energy Savings Opportunity Schemes. The new clause gives the Secretary of State the power to make regulations about Energy Savings Opportunity Schemes.*

LORD CALLANAN

After Clause 201, insert the following new Clause—

**“Application of energy savings opportunity schemes**

- (1) ESOS regulations may provide for—
  - (a) an energy savings opportunity scheme to apply to specified descriptions of undertakings;
  - (b) specified descriptions of undertakings to be excluded from the application of the scheme.
- (2) ESOS regulations may make provision about circumstances in which—
  - (a) two or more participants are to be treated for the purposes of the regulations as if they were a single participant;
  - (b) an obligation imposed under the regulations on one participant is to be treated as if it had been imposed on a different participant.
- (3) The provisions of this Part relating to energy consumption apply to energy consumed by assets located, or activities carried on—
  - (a) wholly or partly in the United Kingdom;
  - (b) wholly or partly in an offshore area;
  - (c) where subsection (4) applies, elsewhere.
- (4) ESOS regulations may make provision about circumstances in which the energy consumption for which a participant is, for the purposes of the regulations, responsible may include energy consumed by—
  - (a) assets located elsewhere than in the United Kingdom or an offshore area,  
or
  - (b) activities carried on elsewhere than in the United Kingdom or an offshore area.

- (5) The provisions of this Part relating to greenhouse gas emissions apply to the emissions resulting from energy consumption to which this Part applies whether such emissions occur in the United Kingdom, in an offshore area or elsewhere.
- (6) ESOS regulations may make provision about the attribution of energy consumption to participants, including in particular provision about the treatment for the purposes of the regulations of—
  - (a) a participant’s consumption of energy generated by that participant;
  - (b) energy consumption by a person over whom a participant has control or influence;
  - (c) energy consumption shared between a participant and one or more other participants or other persons;
  - (d) energy consumed by assets held on trust by or for a participant.
- (7) In this section, “offshore area” means—
  - (a) waters landward of the seaward limit of the territorial sea adjacent to the United Kingdom,
  - (b) any designated area within the meaning of section 1(7) of the Continental Shelf Act 1964, and
  - (c) any area for the time being designated under section 41(3) of the Marine and Coastal Access Act 2009,
 and includes the places above those areas and the bed and subsoil of the sea within those areas.”

***Member’s explanatory statement***

*This new clause makes provision about the application of regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201.*

LORD CALLANAN

After Clause 201, insert the following new Clause—

**“Requirement for assessment of energy consumption**

- (1) ESOS regulations may require the carrying out of assessments of—
  - (a) a participant’s energy consumption;
  - (b) the greenhouse gas emissions resulting from that consumption.
 Such an assessment is referred to as an “ESOS assessment”.
- (2) The provision that may be made by virtue of subsection (1) includes in particular provision about—
  - (a) the frequency of ESOS assessments;
  - (b) the period or periods to which assessments must relate;
  - (c) how assessments are to be carried out;
  - (d) the information that must be provided or obtained for the purposes of an assessment;
  - (e) the matters that must be taken into account in an assessment;
  - (f) record-keeping in relation to an assessment.

- (3) ESOS regulations may make provision requiring an ESOS assessment, or specified parts of an ESOS assessment, to be carried out, approved or audited by a person appointed by a participant (referred to as “an assessor”).
- (4) Regulations made by virtue of subsection (1) may include provision enabling or requiring an ESOS assessment to include recommendations relating to energy savings or emissions reductions.
- (5) The provision that may be made by virtue of subsection (4) includes in particular provision about –
  - (a) the matters about which recommendations may, must, or must not be made;
  - (b) the matters that must be taken into account in making a recommendation;
  - (c) the carrying out of a cost-benefit analysis before including a recommendation in a report.
- (6) “Cost-benefit analysis”, in relation to a recommendation or requirement to take action, means –
  - (a) an estimate of the likely costs to a participant of acting in accordance with the recommendation or requirement;
  - (b) an estimate of the energy savings or emissions reductions likely to result from such action;
  - (c) an analysis of the costs referred to in paragraph (a) together with an analysis of the savings or reductions referred to in paragraph (b) and of any other benefits likely to arise.
- (7) ESOS regulations may make provision about the reporting of ESOS assessments, including in particular provision –
  - (a) about the production of written reports;
  - (b) about the form and content of such reports;
  - (c) about the dissemination of such reports within an undertaking and between related undertakings.
- (8) ESOS regulations may make provision requiring a participant to notify a scheme administrator of specified matters relating to the participant’s compliance with requirements imposed by virtue of this section and may in particular include provision –
  - (a) about the procedure for giving such notice;
  - (b) about the form and content of notices;
  - (c) about the publication of certain information contained within a notice;
  - (d) requiring a participant to justify its choice of assessor.
- (9) ESOS regulations may provide for any requirement imposed by virtue of subsection (1) –
  - (a) to be treated as having been complied with by a participant in specified circumstances, or
  - (b) not to apply to a participant in specified circumstances.”

**Member's explanatory statement**

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision about the assessment of the energy consumption of participants in an energy savings opportunity scheme and of the greenhouse gas emissions resulting from that consumption.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Assessors**

- (1) ESOS regulations may confer functions on an assessor in relation to assessing, monitoring and reporting on compliance with requirements imposed by the regulations.
- (2) ESOS regulations may provide that a participant may only appoint as an assessor a person of a specified description.
- (3) A description may be specified for the purposes of subsection (2) by reference to any criteria, including by reference to –
  - (a) a person's competence, qualifications or experience;
  - (b) a person's inclusion in a designated list or register;
  - (c) a person's membership of a designated body;
  - (d) a person's participation in an designated accreditation scheme;
  - (e) a person's relationship to a participant.
- (4) For the purposes of this section, “designated” means designated by the Secretary of State or a scheme administrator in accordance with ESOS regulations.
- (5) A body may only be designated for the purposes of this section if the body is willing to be so designated.
- (6) ESOS regulations may make provision about –
  - (a) the giving of designations for the purposes of subsection (4);
  - (b) reviewing such designations;
  - (c) circumstances in which such a designation may be removed;
  - (d) maintaining and publishing a list of such designations.
- (7) ESOS regulations may make provision enabling a list or register of persons who may, or who may not, be appointed as an assessor for the purposes of subsection (2) to be maintained by –
  - (a) a designated body;
  - (b) a scheme administrator;
  - (c) the Secretary of State.
- (8) ESOS regulations may confer functions or impose requirements on a person responsible for maintaining a designated list or register and may in particular include provision –

- (a) about the process for including a person in a list or register;
  - (b) about the details to be included in a list or register;
  - (c) for ensuring those details remain up to date;
  - (d) about the publication of a list or register;
  - (e) for the purpose of ensuring that a person included in a list or register continues to meet the criteria for appointment as an assessor;
  - (f) for the purpose of ensuring the quality of ESOS assessments;
  - (g) about the temporary or permanent removal of a person from a list or register in specified circumstances.
- (9) The regulations may make provision authorising a scheme administrator to share reports, notices or other information relating to an energy savings opportunity scheme with a designated body for the purposes referred to in subsection (8)(e) or (f).
- (10) ESOS regulations may make provision –
- (a) enabling the Secretary of State or a scheme administrator to give a direction relating to the maintenance of a list or register;
  - (b) requiring a person responsible for maintaining a list or register to comply with such a direction.”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision about the persons who may be required to carry out, approve or audit some or all of an assessment carried out for the purposes of an energy savings opportunity scheme; and about the maintenance of lists of persons who may be appointed for those purposes.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“ESOS action plans**

- (1) ESOS regulations may require participants to produce ESOS action plans.
- (2) An “ESOS action plan” is a written statement of –
  - (a) any action a participant proposes to take for the purpose of achieving energy savings or emissions reductions;
  - (b) any energy savings or emissions reductions targets a participant intends to achieve.
- (3) Where an ESOS action plan does not include any proposals for taking such action or any such targets, provision made by virtue of subsection (1) may require that a participant include an explanation in the plan.
- (4) ESOS regulations may make provision about the production of ESOS action plans, including in particular provision about –
  - (a) when a participant must produce a plan;
  - (b) the period to which a plan must relate;

- (c) the form and content of a plan;
  - (d) the matters that must be taken into account in producing a plan.
- (5) ESOS regulations may make provision about the publication of ESOS action plans.”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision about action plans for achieving energy savings or emissions reductions.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Action to achieve energy savings or emissions reductions**

- (1) ESOS regulations may make provision –
  - (a) imposing requirements (other than the requirements referred to in paragraph (b)) on participants so as to encourage them to –
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions, or
  - (b) requiring participants to –
    - (i) take specified action for the purpose of achieving energy savings or emissions reductions, or
    - (ii) achieve specified energy savings or emissions reductions.
- (2) The kinds of action that may be specified for the purposes of subsection (1) are –
  - (a) taking action in accordance with a recommendation made in an ESOS assessment;
  - (b) taking action in accordance with an ESOS action plan;
  - (c) taking any other action of a specified kind;
  - (d) taking action to achieve a target included in an ESOS action plan;
  - (e) taking action to achieve any other specified outcome;
  - (f) adopting processes, practices or systems of a specified kind;
  - (g) conforming to specified standards.
- (3) The provision that may be made by virtue of subsection (1)(a) includes in particular –
  - (a) provision requiring a participant to report –
    - (i) on whether the participant has taken the specified action, or on the steps taken by the participant towards doing so, or
    - (ii) on whether the participant has achieved the specified energy savings or emissions reductions, or on the progress made by the participant towards doing so;
  - (b) provision requiring a participant to provide an explanation for any of the matters mentioned in paragraph (a).



- (4) Provision made by virtue of subsection (1)(b) may include a requirement for a participant to report on action taken or energy savings or emissions reductions achieved.
- (5) Regulations made by virtue of subsection (1) may make provision –
  - (a) requiring participants to produce and retain evidence;
  - (b) about the verification of matters about which the participant has reported;
  - (c) about the publication of reports.
- (6) ESOS regulations may –
  - (a) specify the requirements imposed on a participant by virtue of subsection (1) by reference to a cost-benefit analysis;
  - (b) specify circumstances in which a participant is required to take action;
  - (c) impose a requirement to take a specified action on all participants in an energy savings opportunity scheme, or on all participants of a specified description.”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to require, or to impose requirements to encourage, participants in an energy savings opportunity scheme to achieve energy savings or emissions reductions.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Scheme administration**

- (1) ESOS regulations may appoint one or more public authorities to carry out functions with respect to –
  - (a) administering an energy savings opportunity scheme;
  - (b) monitoring compliance with, and enforcing requirements imposed by, the regulations.
- (2) A person appointed by virtue of subsection (1) is referred to as a “scheme administrator”.
- (3) The regulations may make provision for a scheme administrator to authorise another person to exercise specified functions of the scheme administrator.
- (4) Regulations made by virtue of subsection (1) may in particular include provision about –
  - (a) the obtaining of information by, and the provision of information to, a scheme administrator;
  - (b) the determination by a scheme administrator of information in default of its being provided;
  - (c) the auditing and verification of information;
  - (d) the keeping, production and inspection of records;
  - (e) the determination by a scheme administrator of whether an undertaking is a participant in an energy savings opportunity scheme;

- (f) cooperation and information sharing between scheme administrators.
- (5) ESOS regulations may make provision imposing requirements on a participant relating to the provision of such facilities and services, including transport and accommodation, as may be necessary to facilitate the carrying out of any of the scheme administrator's functions.
- (6) ESOS regulations may confer functions on a scheme administrator in relation to the publication of information relating to an energy savings opportunity scheme or its participants.
- (7) ESOS regulations may make provision—
  - (a) about the giving of guidance by a scheme administrator or the Secretary of State in connection with the operation of an energy savings opportunity scheme;
  - (b) requiring specified persons to have regard to such guidance.
- (8) ESOS regulations may make provision requiring the payment by participants to the scheme administrator of fees for or in connection with the carrying out by the scheme administrator of the scheme administrator's functions.
- (9) ESOS regulations may confer a power on a national authority to require a scheme administrator to provide the authority with such information—
  - (a) relating to an energy savings opportunity scheme, and
  - (b) relevant to the exercise of the authority's functions,
 as the authority requests.
- (10) In this section—
  - “national authority” means—
    - (a) the Secretary of State;
    - (b) the Welsh Ministers;
    - (c) the Scottish Ministers;
    - (d) the Department for the Economy in Northern Ireland;
  - “public authority” means a person with functions of a public nature.”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision about the administration of energy savings opportunity schemes.*

LORD CALLANAN

After Clause 201, insert the following new Clause—

**“Enforcement, penalties and offences**

- (1) ESOS regulations may authorise a scheme administrator—
  - (a) to require the production of documents or the provision of information by any person;
  - (b) to question the officers of an undertaking;

- (c) to enter premises with a warrant;
  - (d) to inspect premises and anything on premises and when doing so—
    - (i) to take measurements, photographs, recordings or copies;
    - (ii) to seize documents or records;
    - (iii) to require any person at the premises to provide facilities and assistance to the extent that is within that person's control;
  - (e) to issue a notice requiring a participant to take steps specified in the notice for the purpose of—
    - (i) demonstrating compliance with requirements imposed by or under ESOS regulations, or
    - (ii) remedying a failure to comply with such requirements.
- (2) ESOS regulations may make provision requiring a participant to give notice to a scheme administrator where the participant is unlikely to comply, or has failed to comply, with a requirement imposed by or under the regulations.
- (3) ESOS regulations may provide that a person is liable to one or more penalties in respect of—
- (a) a failure to comply with a requirement imposed on the person by or under the regulations;
  - (b) making a false or misleading statement in connection with an energy savings opportunity scheme.
- (4) The provision that may be made by virtue of subsection (3) includes provision—
- (a) for the publication of specified information relating to the failure to comply;
  - (b) authorising a scheme administrator to impose a financial penalty.
- (5) Where by virtue of subsection (3) ESOS regulations provide for the imposition of a financial penalty, the regulations—
- (a) must provide for the penalty to be paid to the scheme administrator or such other person as the regulations may specify;
  - (b) may specify the amount of the penalty or provide for the amount to be determined by the scheme administrator in accordance with the regulations;
  - (c) may provide for the payment of a further penalty (of an amount specified by or determined in accordance with the regulations) for each day on which the failure to comply is not remedied;
  - (d) may specify how the penalty may be recovered.
- (6) ESOS regulations may create offences relating to energy savings opportunity schemes.
- (7) Regulations made by virtue of subsection (6) may provide for an offence created by the regulations to be triable—
- (a) only summarily, or
  - (b) either summarily or on indictment.
- (8) Regulations made by virtue of subsection (6) may provide for an offence created by the regulations to be punishable with a fine.
- (9) Regulations may—

- (a) provide for defences against offences;
  - (b) make provision about matters of procedure and evidence in proceedings relating to offences;
  - (c) include provision about the liability of a director, manager, secretary or other officer of a body corporate, or a partner of a Scottish partnership, or of a person purporting to act in such a capacity, where an offence under the regulations –
    - (i) is committed with the consent or connivance of such a person, or
    - (ii) is attributable to neglect on the part of such a person.
- (10) References in this section to a scheme administrator include references to a person authorised by a scheme administrator in accordance with provision in ESOS regulations made by virtue of section (*Scheme administration*)(3).”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision for the enforcement of those regulations.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Appeals**

- (1) ESOS regulations may confer rights of appeal against –
  - (a) decisions made in relation to an energy savings opportunity scheme, and
  - (b) penalties imposed or enforcement action taken for failure to comply with the requirements of the regulations.
- (2) The regulations must specify the court, tribunal or person who is to hear and determine an appeal.
- (3) The provision that may be made by virtue of subsection (1) includes, in particular, provision about –
  - (a) the grounds on which an appeal may be made;
  - (b) the procedure for making an appeal (including any fee which may be payable);
  - (c) suspending the effect of any decision, penalty or enforcement action pending determination of the appeal;
  - (d) the powers of the court, tribunal or person to which an appeal is made.”

***Member's explanatory statement***

*This new clause enables regulations made under the first of the new clauses in the name of Lord Callanan inserted after clause 201 to make provision about appeals.*

## LORD CALLANAN

After Clause 201, insert the following new Clause –

**“ESOS regulations: procedure etc**

- (1) Before making ESOS regulations, the Secretary of State must consult –
  - (a) such persons likely to be affected by the regulations as the Secretary of State considers appropriate;
  - (b) to the extent that the regulations contain provision within Welsh devolved competence, the Welsh Ministers;
  - (c) to the extent that the regulations contain provision within Scottish devolved competence, the Scottish Ministers;
  - (d) to the extent that the regulations contain provision within Northern Ireland devolved competence, the Department for the Economy in Northern Ireland.
- (2) Subsection (1) may be satisfied by consultation before this section comes into force (as well as by consultation after that time).
- (3) ESOS regulations may make consequential provision including provision amending or repealing primary legislation.
- (4) ESOS regulations may create exceptions to any requirement imposed by the regulations.
- (5) ESOS regulations may –
  - (a) make provision about application to the Crown;
  - (b) to the extent that they bind the Crown, restrict or modify the application of the regulations.
- (6) ESOS regulations containing any of the following (with or without other provision) are subject to the affirmative procedure –
  - (a) provision extending the descriptions of undertaking to which the regulations apply;
  - (b) provision made by virtue of section (*Action to achieve energy savings or emissions reductions*)(1)(b) of a kind not previously provided for in ESOS regulations;
  - (c) provision conferring on a scheme administrator enforcement powers of a kind not previously provided for in ESOS regulations;
  - (d) provision creating penalties;
  - (e) provision increasing the amount of financial penalties by more than is necessary to reflect changes in the value of money;
  - (f) provision creating an offence or increasing the fine for an existing offence;
  - (g) provision for the payment of a new fee;
  - (h) provision amending or repealing primary legislation.
- (7) Any other ESOS regulations are subject to the negative procedure.
- (8) In this section, “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.”

***Member's explanatory statement***

*This new clause makes provision about the procedure for making regulations about Energy Savings Opportunity Schemes under the first of the new clauses in the name of Lord Callanan inserted after clause 201.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Directions to scheme administrators**

- (1) The Secretary of State may give directions to a scheme administrator.
- (2) The power to give directions under this section includes a power to vary or revoke the directions.
- (3) A scheme administrator must comply with any direction given to it under this section.”

***Member's explanatory statement***

*This new clause enables the Secretary of State to give directions to a scheme administrator under an Energy Savings Opportunity Scheme.*

LORD CALLANAN

After Clause 201, insert the following new Clause –

**“Financial assistance to scheme administrators and participants**

- (1) The Secretary of State may give, or arrange for the giving of, financial assistance to –
  - (a) scheme administrators;
  - (b) participants.
- (2) “Financial assistance” means grants, loans, guarantees or indemnities, or any other kind of financial assistance.
- (3) Financial assistance under this section may be given subject to such conditions as may be determined by, or in accordance with arrangements made by, the Secretary of State.”

***Member's explanatory statement***

*This new clause enables the Secretary of State to provide financial assistance to scheme administrators under, and participants in, an Energy Savings Opportunity Scheme.*

## LORD CALLANAN

After Clause 201, insert the following new Clause—

**“Interpretation**

(1) In this Part—

“assessor” has the meaning given by section (*Requirement for assessment of energy consumption*)(3);

“cost benefit analysis” has the meaning given by section (*Requirement for assessment of energy consumption*)(6);

“emissions reduction” has the meaning given by section (*Energy savings opportunity schemes*)(5);

“energy consumption” has the meaning given by ESOS regulations;

“energy saving” has the meaning given by section (*Energy savings opportunity schemes*)(4);

“energy savings opportunity scheme” has the meaning given by section (*Energy savings opportunity schemes*)(2);

“ESOS action plan” has the meaning given by section (*ESOS action plans*)(2);

“ESOS assessment” has the meaning given by section (*Requirement for assessment of energy consumption*)(1);

“ESOS regulations” means regulations made under section (*Energy savings opportunity schemes*)(1);

“greenhouse gas” has the meaning given by section 92 of the Climate Change Act 2008;

“participant” means an undertaking to which an energy savings opportunity scheme applies;

“related undertaking”, in relation to a participant, means a fellow subsidiary undertaking of, or a group undertaking in relation to, that participant;

“scheme administrator” has the meaning given by section (*Scheme administration*)(2);

“specified” means specified in ESOS regulations;

“undertaking”, “group undertaking” and “fellow subsidiary undertaking” have the meanings given by section 1161 of the Companies Act 2006.

(2) For the purposes of this Part, provision—

(a) is within Welsh devolved competence if it 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) is within Scottish devolved competence if it would be within the legislative competence of the Scottish Parliament if it were contained in an Act of that Parliament;

(c) is within Northern Ireland devolved competence if that provision—

(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.”

***Member's explanatory statement***

*This new clause makes provision about the interpretation of the new clauses in the name of Lord Callanan to be inserted as a new Part 9A after clause 201.*

**Clause 241**

LORD CALLANAN

Clause 241, page 204, line 22, after “Parts” insert “9A,”

***Member's explanatory statement***

*This amendment provides that the new clauses in the name of Lord Callanan, to be inserted as a new Part after clause 201, extend to England, and Wales, Scotland and Northern Ireland.*

**Clause 242**

LORD CALLANAN

Clause 242, page 205, line 11, at end insert –

- “(ba) Part 9A, except sections (*Directions to scheme administrators*) and (*Financial assistance to scheme administrators and participants*);”

***Member's explanatory statement***

*This amendment provides that the new clauses in the name of Lord Callanan which contain provision about ESOS regulations (but not those making provision about directions or financial assistance) come into force on the day on which this Bill is passed.*

LORD CALLANAN

Clause 242, page 205, line 22, at end insert –

- “(ga) sections (*Directions to scheme administrators*) and (*Financial assistance to scheme administrators and participants*);”

***Member's explanatory statement***

*This amendment provides that the new clauses in the name of Lord Callanan which make provision about giving directions and financial assistance in relation to Energy Savings Opportunity Schemes come into force at the end of the period of 2 months beginning with the day on which this Bill is passed.*



**Title**

LORD CALLANAN

In the Title, line 8, after “premises;” insert “about energy savings opportunity schemes;”

***Member's explanatory statement***

*This amendment amends the long title to insert reference to the new clauses in the name of Lord Callanan to be inserted as a new Part 9A after clause 201.*

# Energy Bill [HL]

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AMENDMENTS  
TO BE MOVED  
IN COMMITTEE OF THE WHOLE HOUSE

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*26 August 2022*

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PUBLISHED BY AUTHORITY OF THE HOUSE OF LORDS