

ENERGY PRICES BILL

Memorandum from the Department for Business, Energy and Industrial Strategy to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Energy Prices Bill (“the Bill”). The Bill was introduced in the House of Lords on 18 October 2022. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. This fast-track legislation introduces a new Energy Price Guarantee (EPG) for domestic consumers, as announced by the Prime Minister on 8 September 2022.
3. The EPG will provide support to the end of March 2023, which will be equivalent to an annual bill of £2,500 for the typical household. This support comes in addition to the £400 provided by the Energy Bills Support Scheme (EBSS) announced in April 2022.
4. Households in Northern Ireland will receive similar benefits to those in Great Britain through the EPG in Northern Ireland. They will also receive £400 support under the Northern Ireland Energy Bills Support Scheme (EBSS) introduced through this Bill.
5. The Bill will allow for alternative funding to be made available this winter to provide support to (i) households across the UK that would otherwise miss out on the EBSS as they do not have a domestic electricity contract with a licensed supplier; and (ii) households and non-domestic consumers who would otherwise miss out on EPG and the Energy Bill Relief Scheme (EBRS) for their heating costs because they do not use gas.
6. The Bill will also support all eligible UK businesses, charities and public sector organisations, offering comparable support for 6 months under the Energy Bill Relief Scheme (EBRS).
7. Powers in the Bill will ensure that heat networks benefitting from the EBRS pass through cost savings to their consumers. The Bill also provides for the appointment of an Alternative Dispute Resolution body which will handle complaints raised by consumers against their heat network provider if it has not complied with passthrough requirements.
8. The legislation is intended to ensure support from the EPG, EBSS, or EBRS are received by the end user in cases where support from the schemes is received by

intermediaries. For example, the legislation will require landlords to pass benefits of these schemes through to tenants.

9. Finally, this legislation takes steps to sever the link between abnormally high gas prices and the price of electricity from such generators, through the imposition of a temporary requirement for generators to make payments ensuring consumers pay a fair amount for their electricity and allowing generators to cover their costs and receive an appropriate revenue that reflects their investment commitment and risk. The Government is also legislating for powers that would allow it to consider running a voluntary Contracts for Difference process for existing generators to take place in 2023. A voluntary contract would grant generators longer-term revenue certainty and safeguard consumers from further price rises.

C. DELEGATED POWERS

Clause 1: Domestic energy price reduction schemes for Great Britain. Powers to make and modify EPG schemes in Great Britain:

(1) The Secretary of State may establish a domestic electricity price reduction scheme for Great Britain.

(3) The Secretary of State may establish a domestic gas price reduction scheme for Great Britain.

(6) The Secretary of State may modify or revoke a domestic electricity or gas price reduction scheme for Great Britain.

Power conferred on: Secretary of State

Power exercised by: Written agreement with licensed suppliers (not a Parliamentary instrument)

Parliamentary Procedure: None – not applicable

Context and Purpose

10. On 8 September 2022, the PM announced the EPG to provide extensive support for household energy bills for two years from 1 October 2022. The intention is that HMG payments to energy suppliers will enable them to keep the annual bill for a typical household at £2,500, regardless of increases in wholesale prices. This will be in addition to the £400 Energy Bills Support Scheme funding announced by Government earlier in 2022.
11. The EPG scheme in Great Britain will reduce the cost consumers are charged by their supplier for each unit of gas and/or electricity they use. Suppliers will be reimbursed by HMG for the difference between this reduced rate and the rate they would otherwise have charged if the scheme had not been introduced.
12. The EPG is primarily being delivered through contracts between the Secretary of State and energy suppliers (plus scheme administrators and gas shippers). These contracts are called the “Scheme Documents” (one for electricity and one for gas), and they set out the details of how the schemes operate.

13. Electricity and gas suppliers voluntarily entered into the Scheme Documents prior to 1 October, enabling the schemes to operate from that date. Clause 1, in conjunction with clauses 2 to 4, place the schemes on a more secure statutory footing, including by providing for Ofgem to enforce any non-compliance using its statutory powers.
14. The powers in clause 1 enable the Secretary of State to establish electricity and gas schemes, and to modify and revoke them. The schemes are defined at subsections (2) and (4).

Justification for taking the power and for the procedure

15. Making the scheme operational from 1st October (before any new legislative powers become available) required the use of contracts with suppliers, entered into on a voluntary basis. These contracts (the Scheme Documents) can then continue for the duration of the scheme, with a more secure supporting statutory framework.
16. It is important that all domestic suppliers are required by law to apply to enter into, remain in and comply with the Scheme Documents, to ensure comprehensive coverage of domestic consumers.
17. It is also important that the Secretary of State is able to modify the Scheme Documents unilaterally if needed to ensure the scheme's effective operation. The Scheme Documents set out the process for this, which involves consulting the other parties on proposed modification, and publishing the decision on what modification to make with reasons. This therefore provides transparency as to the Secretary of State's decisions and the basis for them, and those decisions could be challenged in the courts if considered to be unlawful.

Clause 2: GB electricity scheme: supplementary provision. Powers to designate an electricity price reduction scheme in Great Britain:

(1) This section:

- (a) applies in relation to a domestic electricity price reduction scheme for Great Britain that is designated for the purposes of this section in regulations made by the Secretary of State (the "designated scheme");**
and
- (b) applies in relation to the designated scheme as it has effect from time to time.**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

18. The power to designation function enables the provisions set out at clause 2 to be applied in relation to an electricity scheme. This includes the duties on electricity suppliers to apply to join the designated scheme, and when joined to remain in and comply with the scheme (unless they leave in accordance with the scheme). Designation enables Ofgem to enforce these duties on suppliers using their statutory enforcement powers (under Part 1 of the Electricity Act 1989).
19. The Energy Prices Bill makes reference to the “designated scheme” for which powers regarding an electricity price reduction scheme in Great Britain apply. For the purposes of applying these powers, the electricity scheme needs to be designated. This will be done through laying a statutory instrument which formally identifies the Scheme Documents entered into by the Secretary of State and electricity suppliers as the “designated scheme” for the purposes of these clauses. The effect of designating the scheme is that the obligations on suppliers become statutory obligations and are enforceable by Ofgem.

Justification for taking the power and for the procedure

20. These powers are needed so that the wider clauses around the implementation of the EPG in Great Britain are understood to be in clear reference to a set of documents that Parliament has agreed to recognise as the “designated scheme”.
21. Since the powers are only to formally recognise a set of documents for which the Secretary of State already has the power to enter and the power for the Secretary of State to make, modify and revoke the schemes is further addressed on the face of the Bill, the negative procedure is considered appropriate for this Statutory Instrument.

Clause 3: GB gas scheme - supplementary provision. Powers to designate a gas price reduction scheme in Great Britain: (1) This section:

- (a) applies in relation to a domestic gas price reduction scheme for Great Britain that is designated for the purposes of this section in regulations made by the Secretary of State (the “designated scheme”); and**
- (b) applies in relation to the designated scheme as it has effect from time to time.**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

22. The EPG for gas in Great Britain will primarily be delivered through contracts between the Secretary of State and energy suppliers (plus scheme administrators and gas shippers). These contracts are called the “Scheme Documents”. Much of

the detail of how the EPG scheme works is laid out in these contracts between HMG and energy suppliers.

23. The Energy Prices Bill makes reference to the “designated scheme” for which powers regarding a gas price reduction scheme in Great Britain apply. For the purposes of applying these powers, the gas scheme in Great Britain needs to be designated. This will be done through laying a statutory instrument which formally identifies the Scheme Documents entered into by the Secretary of State and gas suppliers as the “designated scheme” for the purposes of these clauses. The effect of designating the scheme is that the obligations on suppliers become statutory obligations and are enforceable by Ofgem.

Justification for taking the power and for the procedure

24. These powers are needed so that the wider clauses around the implementation of the EPG for gas in Great Britain are understood to be in clear reference to a set of documents that Parliament has agreed to recognise as the “designated scheme”.
25. Since the powers are only to formally recognise a set of documents for which the Secretary of State has already has the power to enter and SoS’ power to make, modify and revoke the schemes is further addressed on the face of the Bill, the negative procedure is considered appropriate for this Statutory Instrument.

Clause 5: Domestic electricity and gas price guarantee schemes for Northern Ireland. Powers to make and modify the scheme in Northern Ireland:

(1) The Secretary of State may establish a domestic electricity price guarantee scheme for Northern Ireland.

(3) The Secretary of State may establish a domestic gas price guarantee scheme for Northern Ireland.

(5) The Secretary of State may modify or revoke a domestic electricity or gas price guarantee scheme for Northern Ireland.

Power conferred on: Secretary of State (and the Department for the Economy)

Power exercised by: Private law contract (not a Parliamentary instrument)

Parliamentary Procedure: None

Context and Purpose

26. See Clause 1 ‘Context and Purpose’ for the wider context of the EPG in the UK.
27. In Great Britain energy policy is a reserved matter, and so the UK Government can rely on common law powers to enter into contracts for the EPG scheme there. With energy policy being a devolved matter in Northern Ireland, these common law powers do not apply for contracts in NI. Therefore, the Bill will take specific powers to allow the UK Government to make and enter into contracts with suppliers in Northern Ireland for the delivery of the EPG scheme there.

Justification for taking the power

28. With timelines for the restoration of the Executive in Northern Ireland remaining uncertain, the UK government is taking this power to make sure households in Northern Ireland benefit as soon as possible from the EPG. Any delay to EPG support would lead to households in Northern Ireland being exposed to higher energy prices. The Bill is also providing for these powers to be exercised by the Department for the Economy.

Justification for the procedure

29. As this is a power to contract, no Parliamentary procedure is applicable. This power needs to come into effect on Royal Assent of the Bill in late October to ensure that UK Government can enter the contracts with suppliers in Northern Ireland for them to deliver EPG benefits to customers from 1 November.

Clause 6: NI electricity scheme: supplementary provision. Powers to designate an electricity price reduction scheme in Northern Ireland. (1) This section:

- (a) applies in relation to a domestic electricity price reduction scheme for Northern Ireland that is designated for the purposes of this section in regulations made by the Secretary of State (the “designated scheme”);**
- and**
- (b) applies in relation to the designated scheme as it has effect from time to time.**

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

30. See Clause 2 ‘Context and Purpose’ for an explanation of why Scheme Documents for the electricity price reduction schemes in both GB and NI need to be recognised as the “designated scheme”. The effect of designating the scheme is that the obligations on suppliers become statutory obligations and are enforceable by the Northern Ireland Utility Regulator.

Justification for taking the power and for the procedure

31. These powers are needed so that the wider clauses around the implementation of the electricity price reduction scheme in Northern Ireland are understood to be in clear reference to a set of documents that Parliament has agreed to recognise as the “designated scheme”, and which are enforceable by the Utility Regulator.

32. Designating the scheme means that the statutory obligations of suppliers will be enforceable by the Utility Regulator. Since the powers to designate relate to obligations set out on the face of the bill and the effect is to enable enforcement

by the Regulatory using its existing statutory powers, the negative procedure is considered appropriate for this Statutory Instrument.

Clause 6: NI electricity scheme supplementary provision. Powers for Northern Ireland Regulator to issue directions to NI domestic electricity suppliers in relation to the electricity scheme:

(3) The Northern Ireland Regulator may give an NI domestic electricity supplier directions in relation to the supplier's performance of the terms of the designated scheme.

(4) An NI domestic electricity supplier must comply with any direction given to it under subsection (3).

Power conferred on: Northern Ireland Regulator

Power exercised by: Direction

Parliamentary procedure: Provisions would not be subject to Parliamentary procedure

Context and Purpose

33. This power will enable the Northern Ireland Regulator to issue directions to electricity suppliers with regards to performance of the electricity price reduction scheme in Northern Ireland.

Justification for taking the power and for the procedure

34. It is anticipated the powers may be used if needed to coordinate the timing of any regulated tariff reviews for electricity in Northern Ireland with those in Great Britain. Aligning these reviews may be necessary to ensure efficient administration of the schemes across EPG schemes in GB and NI respectively.

35. Since these are powers for another body to issue directions, these powers are not subject to parliamentary procedure.

Clause 7: NI gas scheme: supplementary provision. Powers to designate a gas price reduction scheme in Northern Ireland: (1) This section:

(a) applies in relation to a domestic gas price reduction scheme for Northern Ireland that is designated for the purposes of this section in regulations made by the Secretary of State (the "designated scheme"); and

(b) applies in relation to the designated scheme as it has effect from time to time.

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

36. See Clause 3 'Context and Purpose' for an explanation of why Scheme Documents for the gas price reduction schemes in both GB and NI need to be recognised as the "designated scheme". The effect of designating the scheme is that the obligations on suppliers become statutory obligations and are enforceable by the Northern Ireland Regulator.

Justification for taking the power and for the procedure

37. These powers are needed so that the wider clauses around the implementation of the gas price reduction scheme in Northern Ireland are understood to be in clear reference to a set of documents that Parliament has agreed to recognise as the "designated scheme" and are enforceable by the Regulator.

38. Since the powers relate to obligations set out on the face of the Bill and the effect is to enable enforcement by the Regulator using its existing statutory powers, the negative procedure is considered appropriate for this Statutory Instrument.

Clause 7: NI gas scheme supplementary provision. Powers for Northern Ireland Regulator to issue directions to NI domestic gas suppliers in relation to the gas scheme:

(3) The Northern Ireland Regulator may give an NI domestic gas supplier directions in relation to the supplier's performance of the terms of the designated scheme.

(4) An NI domestic gas supplier must comply with any direction given to it under subsection (3).

Power conferred on: Northern Ireland Regulator

Power exercised by: Direction

Parliamentary procedure: Provisions would not be subject to Parliamentary procedure

Context and Purpose

39. This power will enable the Northern Ireland Regulator to issue directions to gas suppliers with regards to performance of the gas price reduction scheme in Northern Ireland.

Justification for taking the power and for the procedure

40. It is anticipated these powers may be needed to coordinate the timing of any regulated tariff reviews for gas in Northern Ireland with those in Great Britain. Aligning these reviews may be necessary to ensure efficient scheme administration across EPG schemes in GB and NI respectively.

41. Since these are powers for another body to issue directions, these powers are not subject to parliamentary procedure.

Clause 8(4) & (7): Power to define “NI domestic electricity and gas supply”

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary procedure: Affirmative

Context and Purpose

42. This power enables the Secretary of State to define the meaning of “NI domestic supply” for purposes of the domestic electricity and gas price reduction schemes in Northern Ireland. Defining those terms will be necessary in order to determine which consumers are eligible for these schemes.

Justification for taking the power and for the procedure

43. Due to there being cases in the NI energy market where the definitions of ‘domestic premises’ are unclear, it was not possible to include a definition suitable for the face of the Bill. A power has been taken so that the necessary detail can be dealt with in regulations. The affirmative procedure is considered appropriate given the significance of the regulations in determining eligibility for these schemes.

Clause 9(1) & (2):

Power to make provision for the reduction of electricity charges and to make payment to reduce electricity charges for non-domestic customers in Great Britain

Power to make provision for the reduction of gas charges and to make payment to reduce gas charges for non-domestic customers in Great Britain

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Made affirmative for first 6 months after the coming into force of the Act. Thereafter draft affirmative.

Context and Purpose

44. On 21 September 2022, the Government announced the Energy Bills Relief Scheme (EBRS) for Businesses and other non-domestic Customers in Great Britain. The EBRS is intended to perform a function similar to that which the Government's EPG performs for domestic customers. However, unlike the EPG, which it was considered practicable to implement by contract in the first instance, the EBRS is to be implemented by legislative means.

45. The intention is that the Bill will enable financial assistance to be given to cover payments by Government to energy suppliers that will allow them to give prescribed discounts (based on the wholesale gas and electricity components of suppliers' charges) to eligible non-domestic customers, including businesses, charities, and public sector organisations. The price reduction will include charges for electricity and gas from 1 October 2022, with the initial 6-month period starting from the first operative date of the scheme beginning (and may be extended for four such consecutive periods). The scheme may not apply for the reduction of charges for electricity and gas supply if that supply takes place after the end of the period of two years, starting with the operative date of the scheme beginning.
46. The EBRS scheme has been necessary in response to exceptional global circumstances affecting energy prices. It is being introduced at pace to protect non-domestic consumers from the effects of soaring wholesale gas prices, which would put significant financial pressure on a large proportion of UK businesses, charities, and public sector organisations, such as hospitals and schools. The wider negative effects of this economic pressure (including on the businesses of gas and electricity suppliers themselves) would be severe and would materialise very quickly in the absence of an intervention of this kind.
47. Clause 9 subsection (1) makes provision for the Secretary of State to make regulations, to make provision for and in connection with, reducing the amount that non-domestic electricity suppliers in Great Britain would otherwise charge non-domestic customers for electricity supplied, and making payments to GB non-domestic energy suppliers in respect of the reductions applied.
48. Clause 9 subsection (2) makes provision for the Secretary of State to make regulations to make provision for and in connection with, reducing the amount that non-domestic gas suppliers in Great Britain would otherwise charge non-domestic customers for gas supplied, and making payments to GB non-domestic gas suppliers in respect of the reductions applied.
49. Like other regulation-making powers in the Bill, under clause 26(2) the Secretary of State can exercise these powers so as to make different provision for different purposes or cases; make incidental, supplementary or consequential provision; and make transitional, transitory or saving provision.
50. Although the basic premise of the EBRS scheme, set out in clause 9, is relatively simple, the diversity of contractual arrangements entered into by suppliers and their non-domestic customers (both with each other and with third parties) means that the implementation of the scheme is inevitably complex. At the same time, the circumstances in which the policy has had to be developed have made it impracticable to avoid providing for all the detail of the scheme in delegated legislation. Accordingly, the focus in framing the EBRS provisions in the Bill has

been on ensuring that there are sufficient powers to provide for all aspects of the scheme that are under consideration.

51. Schedule 1 sets out particular kinds of provision that may be made by regulations in relation to these powers, notably, regulations may:
- a. Apply to charges for energy supply that occurred before the section or regulations came into force;
 - b. Set eligibility criteria for the non-domestic GB customers, or parts of energy supply;
 - c. The power under clause 26(2)(a) allows the regulations to make different provision for energy supply to different descriptions of customers, for different descriptions of energy supply of non-domestic customers and for different parts of energy supply to non-domestic customers. This includes different provision for reducing the amount that would otherwise be charged for non-domestic electricity supply by GB non-domestic electricity suppliers;
 - d. Provide for the delegation of functions (including functions involving the exercise of a discretion) to be exercisable by any person or corporate entity (including the Secretary of State). In particular, the regulations may confer power: to make regulations, rules or other subordinate legislation, or to give directions;
 - e. Provide for duties to be imposed on, or powers to be conferred on, any person (including the Secretary of State), including relating to the provision or making available of information;
 - f. Provide for the modification of contracts or other arrangements relating to energy supply to non-domestic consumers;
 - g. Make provision for civil penalties and enforcement of the obligations under the regulations;
 - h. Make provision for the exclusion of liability under the scheme;
 - i. Make provision to deal with the consequences of, or to prohibit or otherwise regulate, transactions or arrangements that manipulate or otherwise abuse any support scheme or the availability of any support scheme; and
 - j. Make provision to the terms on which licensed suppliers are to provide energy supply to which a support scheme relates to a specified description of customers (financially disadvantaged customers).

Justification for taking the power

52. The powers taken are broad and far-reaching but are fundamentally necessary to allow this scheme to be established for the relief of GB businesses in consequence of the extremely high gas price and the knock-on effect of gas and electricity bills on GB businesses. The width of powers taken – for example being able to impose obligations through regulations, reflects the fact that we need to be able to have different options for bestowing the necessary functions on the bodies that will administer the scheme, and reflect the fact that this is intended to be a short-term response to unprecedented circumstances.

53. This scheme will require a significant degree of technical detail to operate efficiently. It is therefore appropriate that powers be delegated to set out the detail of the scheme. It would not be possible to include the level of detail of the scheme on the face of the Bill. Doing so could potentially mean the scheme would not be able to achieve its objectives or would be insufficiently responsive to issues identified in its operation which require the initial legislative provision to be changed or supplemented. Indeed, it is envisaged that on some points at least, the regulations will need to provide for certain matters of detail to be set out in other subordinate legislation, or in directions.
54. Relatively broad secondary powers are also necessary to ensure that any unforeseen consequences arising out of the operation of the scheme may be remedied at pace (with due Parliamentary oversight) but without taking up unnecessary amounts of Parliamentary time. The EBRS is a wide-ranging scheme designed to address extremely high energy bills for non-domestic consumers. It has been created in response to the unforeseen record high energy prices resulting from forces, at least in part, outside of Government control. This is therefore designed to be an emergency, short term, response to address a pressing national concern. It is not possible to foresee all outcomes of this scheme. As such, sufficient scope is required to meaningfully address issues that will only become apparent when the scheme is operating. Providing for reasonable powers to allow for correction of defects, to enhance efficiency, and to ensure that public moneys are being spent efficiently is appropriate where significant amounts of public money are being expended.
55. Further, it is reasonable that secondary powers be available to the Secretary of State to modify the scheme during its operation to better target support where it is most needed. Information about the actual impacts of the scheme and any changes in overall energy prices are not likely to be fully known from the outset. Therefore, it is reasonable to make provision for the Secretary of State to take powers to be able to adjust entitlements, withhold payments, and make provision around the categories of people to whom such relief may be applied.
56. The powers are necessary to ensure the Secretary of State, or anybody given responsibility for administering scheme payments on the Secretary of State's behalf can reimburse non-domestic energy suppliers applying price reductions on customers' bills and allow non-domestic customers to receive the benefit of a discount.
57. Given the broad nature of the powers taken, the matters in Schedule 1 provide an indication of what the delegated powers could mean in practice. Such regulations will make provision:
- a. For the appropriate application of the EBRS Scheme Schedule 1, paragraph 2:

- a. The EBRS has been announced as applying, subject to Parliamentary approval, to customers' energy usage and bills from 1 October. However, the legislation will not have been made before that date. It is therefore necessary to provide for the application of discounts on the prices charged to customers prior to the making of the regulations (paragraph 2(1)).
 - b. There is a great diversity of contracts, and not all customers are in the same position in the non-domestic sector. Policy needs to address on the one hand large manufacturers and power stations burning gas, and on the other, businesses whose consumption and level of sophistication makes them similar to a typical domestic customer. The different circumstances of customers, and in particular the different times at which prices under their contracts may have been fixed, means that not all are equally in need of the assistance provided by the scheme. This is why paragraphs 2(2) to (5) provide for various ways in which the regulations may distinguish between different customers, parts of energy supply, reductions in charges, and so on. If identical rules were applied to all non-domestic customers, the risk of the benefits of the scheme being distributed in ways that could be characterised as unfair or unequal would be very high. To take the example of a gas-fired power station: having chosen to deal with high wholesale electricity costs by means of the EBRS (and EPG), it would make no sense if the generator were also entitled to a discount on its purchases of gas from a gas supplier. The EBRS scheme has been developed at pace, and it has not been possible to make detailed provision for all those who should be "in" or "out" of the scheme prior to introducing the Bill.
- b. For the power to make provision for the delegation of functions Schedule 1, paragraph 3 (1)(2):
- a. The scheme involves the management of a large system for processing claims from suppliers (for reimbursement by government after applying discounts) and making payments to them. It will also involve numerous rules to be followed by suppliers (and, in some cases, customers): compliance with these will need to be monitored, and non-compliance enforced against. The delegation of functions is therefore intrinsic to the establishment of the scheme (since the necessary administrative arrangements have not been finalised in time to be reflected in the drafting of Bill clauses): hence paragraph 3(1).
 - b. The scheme is a response to economic circumstances. Those circumstances may change while the scheme is in force. Equally, whilst it is possible to state certain principles about the operation of the scheme relatively easily, working through how they are to be applied in the case of a range of differently structured supply

contracts and customers who may find themselves in very different positions, is much less straightforward. Hence the need (as policy continues to develop, but the economic deadline for bringing a functioning scheme into effect approaches rapidly) to take a staged approach to legislating the detail of the scheme, by providing explicitly for delegated legislative power (paragraph 3(2)).

- c. The power to provide for giving directions in regulations may be appropriate to exercise where there is a need for e.g. the Secretary of State to be able to take particular one-off action (such as changing a technical reference point used in discount calculations).
- c. For powers and duties to be imposed Schedule 1, paragraph 4(1) and (2):
 - a. The provision for the conferring of powers and duties in paragraph 4 is in part a natural extension of the provision about delegation of functions in paragraph 3(1). However, there are also some particular reasons for including it.
 - b. An obvious example of the need for the regulations to be able to impose duties is that there will need to be a duty on suppliers to apply the prescribed discounts and a duty on the Secretary of State or his delegate to make the payments that will reimburse suppliers for having applied the discounts. The scheme would command no confidence without such obligations. Consideration was given to putting such duties in the Bill itself, but it was decided that since the detail in either case would have still been in regulations, there was little value in putting in primary legislation a duty that would amount to little more than saying "X must do what the regulations say that X must do". Putting everything in regulations appears, in this case, to make for a higher degree of regulatory integrity and transparency.
 - c. An example of the need for regulations to confer powers is the need for the Secretary of State (and/or others who may have functions in respect of auditing the scheme or carrying out enforcement activity in relation to it) to be able to request information about the operation of the scheme. This will be key to ensure the monitoring of public money (as in, to ensure cost-value assessment for the taxpayer).
- d. For the modification of contracts Schedule 1, paragraph 5:
 - a. The scheme should not interfere in the customer/supplier relationship more than is necessary. Customers need to be alert to the benefits of the scheme and are better placed than anybody else to check that they are receiving them. In this context, it is likely to be appropriate to provide that they are entitled to receive those benefits as a matter of contract between themselves and their supplier. However, it would not be appropriate to provide for this

separately from the substantive provision about those benefits (which will be in the regulations). Hence the need for a further power.

- b. It is also envisaged that it is likely to be necessary to take measures to ensure that existing provisions (e.g. on "change in law") in customer / supplier contracts do not undermine the scheme (for example, by somehow perversely entitling the supplier to add the amount of the discount back in to the charges to the customer).
- e. For powers on enforcement Schedule 1, paragraph 6:
- a. This is a scheme about the entitlement of customers to receive a discount and of suppliers to receive a payment, where certain criteria are met. A range of circumstances can readily be imagined in which – for whatever reason – customers or suppliers receive more or less under the scheme than the rules of the scheme say that they are entitled to receive. In such cases, the primary remedy in all cases will be to correct what has gone wrong – for example, by adjusting the discount applied to a customer or amount paid to a supplier.
 - b. However, it is envisaged that compliance with some obligations imposed by regulations will not be capable of being enforced in this way. This is likely to be the case, in particular, in respect of obligations to provide information to those auditing or monitoring compliance with the scheme: experience suggests that it is very hard to achieve a satisfactory level of compliance with such obligations unless there is an appropriate sanction for non-compliance (e.g. some form of penalty for responding to an enforcement body's request by providing incomplete, misleading or false information).
- f. For powers on the exclusion of liability Schedule 1, paragraph (7):
- a. This provision provides for a person not to be liable in damages for things done or omitted in the exercise or purported exercise of functions under the regulations. Limitations or exclusions from liability are normally negotiated between the parties to a contract and provided for expressly in the contract itself. The provision is important given the context in which non-domestic relief regulations will operate, namely in respect to certain provisions of commercial contracts between suppliers and non-domestic customers. The effect is to give cover to any party where they act contrary to the contract but in accordance with the provisions of the Regulations.
- g. For powers on avoidance of abuse or unreasonable reliance on support schemes Schedule 1, paragraph 8(a) and (b):

- a. Paragraph 8(a) aims to ensure that scheme regulations can make appropriate provision to address the consequences of, and in some cases to prohibit, behaviour by customers or suppliers (or, conceivably third parties such as intermediaries) that seeks to exploit the scheme rules in a way that results in them benefiting financially to a greater degree than the scheme was designed to benefit them.
 - b. A number of different potential forms of "gaming", "manipulation" or "abuse" of the scheme have been identified. It will be necessary to make provision about these in order to prevent them from prejudicing the fair, effective and value for money operation of the scheme.
- h. For powers on financially disadvantaged customers:
- a. Separately, there is considerable concern that a certain segment of non-domestic customers find themselves structurally disadvantaged in current market conditions in their efforts to find supply on acceptable terms. Broadly speaking, this is because of their weak (but, in ordinary market conditions, by no means hopeless) creditworthiness. It is desirable, given the general enhanced position of suppliers in terms of reduced exposure to weak customer creditworthiness as a result of scheme payments, that the Secretary of State should be able to require suppliers to offer such customers improved terms of supply for the duration of the scheme. Hence the need for paragraph 9. It is envisaged that these powers could be used, if necessary, to ensure this class of customer are offered equivalent terms to the generality of the supplier's non-domestic customer base for the duration of the scheme.

Justification for the procedure

58. Regulations made under this clause would be subject to the made affirmative procedure for the first six months and draft affirmative thereafter. The Department considers this procedure provides an appropriate level of Parliamentary scrutiny for such a power due: to the broad powers taken as a result of the nature of the scheme, noting the significant spending powers delegated to the Secretary of State, ensuring adequate scrutiny of the scheme rules, and to ensure enforcement is fit for purpose. Specifically, the "made", rather than "ordinary" affirmative procedure is appropriate in this initial period because the urgent economic need for the scheme to be in force quickly and in readiness for the October billing cycle means that it is not practicable to wait until affirmative instrument debates take place in the ordinary course before making the regulations.

59. Finally, it should be noted that subsection 8 of Clause 9 imposes significant temporal limitations on the exercise of the powers in subsections (1) and (2) and Schedule 6, as is appropriate for emergency legislation. The powers can only be

exercised for up to six months at a time, effectively no more than four times in a two-year period.

Clause 9(3), (4), (5):

Power to make the regulations to set out how the amounts charged are to be reduced under Clause 9(1) & (2) by an amount determined by the ‘Government Affordable Price’

Power to make the regulations to make provision on how the reduction to the amounts charged will be calculated and for this to be specified in, or determined in accordance with, the regulations

A Power for the Secretary of State to review the operation of regulations under this section

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Made affirmative for first 6 months after the coming into force of the Act. Thereafter draft affirmative

Context and Purpose

60. The purpose of Clause 9, subsection 3 is to confer on the Secretary of State the power to make regulations to provide for electricity and gas charges to be reduced by an amount calculated by reference to the difference between:
- a. The wholesale price paid, or treated as paid, for electricity or gas (as specified in, or determined in accordance with, the regulations), and
 - b. A notional wholesale price for electricity or gas (as specified in, or determined in accordance with, the regulations) if that notional price is lower than the price paid or treated as paid.
61. If the regulations make such provision, the purpose of Clause 9, subsection 4 is for the Secretary of State to:
- a. Provide for:
 - a. The wholesale price to be the actual wholesale price paid or a wholesale price treated as paid; and
 - b. That wholesale price to be specified in or under the regulations, or determined in accordance with the regulations;
 - b. Provide for the notional wholesale price to be specified in or under the regulations or determined in accordance with the regulations.
62. Clause 9, subsection 5 confers the Secretary of State the power to review operation of regulations under this section.

Justification for taking the power

63. Subsections 3 and 4 are a further particularisation of the general power in subsections 1 and 2. It effectively elucidates, at a high level, the principle on which the EBRS scheme is designed: that of setting a government supported price for the wholesale energy cost element (“the notional wholesale price”) which provides the basis on which non-domestic customers should pay suppliers. This is achieved by subtracting the notional wholesale prices from the wholesale energy cost element assumed to be included in the charges under a particular contract and taking the result as the discount to be applied to charges under that contract. However, the detail of how this principle is to be applied in all the different kinds of contract (fixed price, variable price and flexible contracts) will only be finalised in the secondary legislation, as provided for by subsection 4. This could include details of the explicit discount and price reduction, including, but not limited to the: formulae, time series, application and dependencies (such as application to new or flexible purchase contracts or default / out of contract / variable tariffs).
64. As said above, this scheme will require a significant degree of technical detail to operate efficiently. It is therefore appropriate that powers be delegated to fill in the overarching detail of the scheme. It would not be possible to include the level of detail of the scheme on the face of the Bill. Doing so could potentially mean the scheme would not be able to meet its policy intent or be so rigid as to not be necessarily responsive to issues identified in operation.
65. The power to review the scheme is one which is inherent in the Secretary of State's discretion to exercise the other delegated powers provided for in respect of the EBRS. As such, subsection 5 signposts the fact that it may be necessary to review the operation of the scheme during the currency of the scheme.

Justification for the procedure

66. Regulations made under this clause would be subject to the made affirmative procedure in the initial six months, draft affirmative thereafter. The Department considers that this procedure provides an appropriate level of Parliamentary scrutiny for such a power to ensure adequate oversight of the way the scheme will operate, and the means by which the public purse will be used. Specifically, the "made", rather than "ordinary" affirmative procedure is appropriate in the initial period because the urgent economic need for the scheme to be in force means that it is not practicable to wait until affirmative instrument debates take place in the ordinary course before making the regulations.

Clause 11(1) & (2): Powers to make payment to reduce electricity charges for non-domestic customers in Northern Ireland and powers to make payment to reduce gas charges for non-domestic customers in Northern Ireland

Power conferred on: Secretary of State (and the Department for the Economy)

Power exercised by: Regulations and amendments to licence conditions – note that this has yet to be confirmed.

Parliamentary Procedure: Made Affirmative first 6 months after the coming into force of the Act. Thereafter draft affirmative.

Context and Purpose

67. On 21 September 2022, the Government announced the EBRS for Businesses in Great Britain and a comparable scheme for Northern Ireland. The intention is that the Bill will enable for financial assistance to be given to cover payments to energy suppliers to allow for a discount on wholesale gas and electricity prices for all eligible non-domestic customers, including businesses, the voluntary sector and public sector organisations. The scheme will run for 6 months, covering energy used from 1 October 2022 to 31 March 2023, with the possibility of renewal for three further periods of 6 months.
68. The powers contained in clause 11 of the Bill concerning the EBRS for Northern Ireland will provide for the Secretary of State to make regulations in relation to the provision of the reduction in cost that non-domestic customers are charged for electricity and gas supply. Schedule 2 provides that the powers will enable these regulations to make provision, including:
- a. For charges for energy supply that manifested before the regulations came into force;
 - b. For different treatment of different categories of non-domestic user and different sorts of energy supply;
 - c. For the delegation of functions (including functions involving the exercise of a discretion) to be exercisable by any person or corporate entity;
 - d. For the duties to be imposed on, or powers to be conferred on, any person, including the collection of information;
 - e. For the modification of contracts or other arrangements relating to energy supply to non-domestic consumers;
 - f. For the provision of enforcement, which may provide for civil penalties and / or criminal offences;
 - g. Make provision for the exclusion of liability under the scheme;
 - h. To deal with the consequences of, or to prohibit or otherwise regulate, transactions or arrangements that manipulate or otherwise abuse any support scheme or the availability of any support scheme; and
 - i. To the terms on which licensed suppliers are to provide energy supply to which a support scheme relates to a specified description of customers (financially disadvantaged customers)
69. The powers in clause 12 enable regulations to specify what is meant by NI non-domestic electricity supply and NI non-domestic gas supply. This is to enable the EBRS NI to dovetail precisely with the EPG NI scheme to ensure that no premises falls between the gaps of the two schemes and each is appropriately allocated to

the right scheme e.g. where a business premise might have a domestic gas supply meter.

70. Provision is therefore also required for the Secretary of State to possess the spending power to make payments to suppliers in respect of reductions in charges arising by virtue of the regulations regarding the reduction in non-domestic charges for electricity use. The Bill will contain a broad UK wide spending power for the Secretary of State to provide financial assistance for the purpose of supporting any person in meeting energy costs, either indirectly through suppliers and various intermediary bodies or through any combination. This would apply regarding the EBRIS NI.
71. Clause 21 provides that the Secretary of State is able through regulations to amend licence conditions or Northern Ireland legislation or the network code to allow the scheme to operate effectively.
72. The Bill also provides for a power of direction to allow the Secretary of State to issue directions in respect this scheme or in relation to the energy crisis, this can be found in clause 22. Pertinently for the EBRIS NI, this enables the Secretary of State to be able to issue a direction to the Northern Ireland Utility Regulator or to a Northern Irish supplier which would include a direction for that body to modify licence conditions.

Justification for taking the powers

73. The powers taken are broad and far-reaching but are fundamentally necessary to allow this scheme to be established for the relief of Northern Irish businesses in consequence of the extremely high gas price and the knock-on effect of gas and electricity bills on Northern Irish businesses. Given that the structure of the energy sector in Northern Ireland is significantly different from GB the powers taken will enable us to impose obligations on those participants across the sector who are necessary for its delivery etc. In doing so, we will have to be careful not engage any obligations that might have a material effect on the Single Electricity Market, the wholesale market operating across the whole island of Ireland (as this would create significant political issues). The breadth of powers taken – for example being able to impose obligations through regulations or through amendments to licences or to network codes, reflects that we need to be able to have different options for bestowing the necessary functions on the as yet unconfirmed bodies - given the speed at which this scheme is developing. We also may need to exercise the powers to provide comfort for the NI bodies carrying out functions in relation to the EBRIS scheme. The Bill is also providing for these powers to be exercised by the Department for the Economy.

Justification for taking the procedure

74. Regulations made under this clause would be subject to the made affirmative procedure for the first time that the powers are exercised i.e. within 6 months of the Bill coming into force. The Department considers this procedure provides an

appropriate level of Parliamentary scrutiny for such a power due: to the broad powers taken as a result of the nature of the scheme, noting the significant spending powers delegated to the Secretary of State, ensuring adequate scrutiny of the scheme rules, and to ensure enforcement is fit for purpose. Further exercise of the powers would be draft affirmative. We consider this procedure to be apt for the changes required.

Henry VIII Power

75. There is a general consequential amendment power to allow the amendment of primary legislation including Northern Ireland legislation for provision consequential on this Act for schemes set up under it. Given the rapid speed at which this policy is having to be developed, this power will enable us to make amendments to Northern Ireland legislation to allow the NI scheme to operate effectively. This power is subject to the affirmative procedure if amending primary legislation (which include NI Orders). Regulations that amend other legislation are subject to the negative procedure. See clause 27.

Clause 14(2): Increasing expenditure for individual projects under clause 13(2)

Power conferred on: Secretary of State

Power exercised by: Laying a motion before the House of Commons

Parliamentary Procedure: By resolution of the House of Commons

Context and Purpose

76. This power for the Secretary of State to increase expenditure for individual projects under clause 13(2) in excess of £100 million where it is authorised by a resolution of the House of Commons.

Justification for taking the power

77. The steps that can be taken in relation to clause 13(2) of the Bill provide that any financial expenditure in relation to a single project is subject to a cap of £100 million.

78. This provision allows the Secretary of State to disapply the cap where expenditure exceeds £100 million where it is authorised by a resolution of the House of Commons.

79. This enables sufficient funding over the value of £100 million per project should the House of Commons agree.

Justification for the procedure

80. This provision mirrors section 8(8) of the Industrial Development Act 1982 ("IDA 1982") which provides that a cap for individual projects can be increased by a

resolution of the House of Commons where that expenditure is required in response to the energy crisis.

81. It is appropriate that a financial measure – namely an increase in the spending above the level of the cap is subject to the approval of the House of Commons.

Clause 14(3) and 14(4): Disapplication of requirement for resolution of the House of Commons to increase expenditure for individual projects under clause 14(2) and requirement to lay a statement before Parliament

Power conferred on: Secretary of State

Power exercised by: Decision

Parliamentary Procedure: Secretary of State to lay a statement before Parliament

Context and Purpose

82. Clause 14(3) provides that the requirement to obtain a resolution of the House of Commons to incur expenditure in excess of the cap in clause 14(2) can be disapplied by a decision of the Secretary of State where the making of the expenditure is urgent and it is not reasonably practicable to obtain the approval of the House of Commons. This provision also mirrors that in section 8(9) of the IDA 1982.

Justification for taking the power

83. The Government considers this power necessary to ensure urgent expenditure can be made in relation to the energy crisis without delay.

Justification for the procedure

84. As is the case under the IDA 1982 (see section 8(9), the Secretary of State, clause 3(4) provides that where circumstances mean that the approval of the House of Commons cannot be obtained because there is an emergency, the Secretary of State must lay a statement about that expenditure before Parliament as soon as reasonably practicable.

Clause 15(2): Power for Secretary of State to make provisions about designated bodies taking action to support relevant steps. Paragraph 1(1) of Schedule 5: Power for Department for the Economy NI to concurrently exercise the power of the SoS under clause 15(2)

Power conferred on: Secretary of State (and the Department for the Economy)

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative

Context and Purpose

85. The Secretary of State will be provided with regulation-making powers under clause 15(2).
86. The Energy Bills Support Scheme (EBSS) is designed to deliver against the Government's public commitment to support every household with the rising cost of energy this winter through a £400 grant. This will be delivered through domestic electricity suppliers. Whilst this approach will ensure the £400 reaches the vast majority of households, it will not reach those who do not have a domestic electricity contract.
87. In order to ensure equivalent support reaches those households that would otherwise not receive the £400 through EBSS, we intend to create an Alternative Funding (EBSS AF) approach. We have considered a range of delivery options to ensure the support reaches households across the UK and are looking to identify and work with a delivery partner that can get the equivalent support to those eligible.
88. The Non-Domestic Alternative Fuel Payment (AFP) is designed to meet the Government's commitment to provide support for non-domestic consumers who are not able to receive support for their heating costs through the Energy Bill Relief Scheme, and who use heating oil or alternative fuels instead of gas. Support will likely take the form of a flat rate payment. We are considering whether to deliver support via electricity bills in both GB and NI, under a similar delivery model to the EBSS, or to provide support via a designated delivery body. The powers in the Bill allow for the provision of financial assistance via a designated body.
89. The Domestic Alternative Fuel Payment (AFP) scheme will provide a one-off £100 payment via electricity suppliers to those who use alternative fuels to heat their homes. The scheme's delivery mechanism may not automatically reach all intended recipients, for example those who are connected to neither the gas nor the electricity grid. The powers in the Bill therefore will also allow for the establishment of an AFP Discretionary Fund to provide the £100 payment to these customers via a designated delivery body.
90. Heat network consumers will be eligible for the £100 payment to be made available to all households supplied by a heat network. These powers will be used to make an SI requiring heat suppliers to notify the Secretary of State, or an authorised person (in this case the Office for Product Safety and Standards), of addresses of buildings supplied by the network, in addition to re-notifying some matters mentioned in Regulation 3 of the Heat Networks (Metering and Billing) Regulations.
91. Heat suppliers will be required to notify within 30 days of the SI being made to ensure eligible consumers receive the £100 payment for heat networks.
92. Heat suppliers will need to notify promptly to ensure that their consumers can benefit from the £100 payment as soon as possible. The data in these notifications will be shared with local authorities and (for the purpose of clause 22, electricity

suppliers, who can then credit domestic electricity bills with £100). Delay in notifying risks consumer detriment.

93. These regulations will apply across the UK.

Justification for power

94. We are exploring how Non-Domestic AFP and Domestic AFP should best be delivered. This includes investigating whether a designated delivery partner would manage applications and issue support to successful applicants.

95. This power allows the Secretary of State/Department for Economy to issue regulations which specify how funding via designated bodies is to be delivered. If a body is designated to provide AFP Discretionary Fund and Non-Domestic AFP payments under the scheme, it may become necessary to rely on this power to make sure funds are used appropriately and to achieve the policy intent. In addition, given the sums of public money being used, it is crucial that this power exists and can be relied upon to protect the public purse, where required. Whilst a final decision on delivery partners has not been taken, we are keen to ensure we would have the means to deliver this support through that route.

96. The regulation-making power is needed to provide for the requirement for heat suppliers to notify the Secretary of State of the address of buildings supplied by the heat network. This will ensure the £100 payment for heat network consumers reaches the consumer.

Justification for procedure

97. We consider the negative procedure is appropriate for this power. Regulations would be focused on the technical and administrative aspects of how the scheme would operate and would not be applying penalties or amending other regulations. Therefore, the scrutiny afforded by the negative procedure would be sufficient.

98. We will be introducing new requirements on heat networks, including additional notification requirements to the OPSS. This will increase costs on business albeit to a minimal degree. Such costs will be outweighed by the benefits of the policy – ensuring the £100 payment for heat network consumers reaches the consumer. It will also make regulation and enforcement more effective and efficient.

99. The scrutiny afforded by the negative procedure would be sufficient.

Clause 15(7): Power for Secretary of State to designate a statutory body for the purposes of clause 15. Paragraph 1(1) of Schedule 5: Power for Department for the Economy NI to concurrently exercise the power of the SoS under clause 15(7)

Power conferred on: Secretary of State and the Department for the Economy NI

Power exercised by: Regulations

Parliamentary Procedure: Negative

Context and Purpose

100. The Secretary of State may designate a statutory body in regard to their powers under Clause 13 to give support to meet energy costs.

Justification for taking the power

101. As explained in Clause 15(2), we have explored a number of possible delivery options to deliver support equivalent to the domestic AFP to other households who may not be reached by the domestic AFP scheme itself. Appointing a statutory body will allow for households intended to benefit from the AFP, but which the AFP scheme will not directly reach (e.g. those without an electricity supply), to receive an equivalent level of support. Without this power, we will be unable to designate a statutory body to be the delivery body for these schemes which would prevent government policy from being achieved. Similarly, this clause will support the delivery of the Non-Domestic AFP via a designated statutory body, if this is the chosen delivery mechanism.

Justification for the procedure

102. This power defines which bodies are “designated bodies” in respect of which the Secretary of State may make provision by regulations under Clause 15(2). Those regulations will be subject to the negative procedure. This power is therefore considered uncontroversial and the negative procedure is appropriate.

Clause 16: Power to make temporary requirement on electricity generators to make payments regulations

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative (on first use), negative thereafter

Context and Purpose

103. This power enables the Secretary of State to make regulations which impose a requirement on specified electricity generators (or classes of such generators) to make periodic payments to a payment administrator. The purpose of this power is to obtain funds from certain electricity generators so that: a) those funds can be paid to electricity suppliers in connection with reducing the costs of electricity to customers, or b) to meet expenditure incurred or to be incurred by the Secretary of State in reducing the cost of electricity to customers (under other schemes outlined in this memorandum).

104. The power will enable the Secretary of State to specify which electricity generators the payment requirement will apply to. A power is also provided for the Secretary of State to set out in regulations the circumstances where a particular generator can be designated administratively as an electricity generator for the purposes of the payment requirement (see below).
105. The regulations may provide for matters such as¹:
- a. The calculation of the amount of any payment and the time at which the payment needs to be made;
 - b. Provision about an advance payment in respect of a potential payment liability and about balancing payments;
 - c. Provision about interest on and penalties with respect to late payments and enforcement of the payment requirement;
 - d. Provision about what the payment administrator must do with the money received;
 - e. Provision about what energy suppliers must do with the payment;
 - f. Provision about conferring functions on the payment administrator or other bodies (including the Northern Ireland Utility Regulator);
 - g. Provision about appeals against a calculation, determination or other decision made under the regulations; and
 - h. Provision about dealing with the consequences of, or to prohibit or otherwise regulate, transactions or arrangements that undermine effectiveness of the regulations.

Justification for taking the power

106. It is important that the details of a market intervention of this sort are correct and that it does not impose a disproportionate or damaging burden on the industry whilst at the same time providing the public with further certainty about their energy bills. Bearing this in mind, certain details of the temporary payment requirement (such as the level of revenue allowed below the cap) are subject to consultation with industry; similarly, details of who the payment administrator will be and what powers they have needs to be determined. It has not been possible to provide for those detailed provisions on the face of the Bill but clause 16(3) sets out the sort of matters that will be included in those regulations. The Department's view is that this provides an appropriate balance enabling Parliament to consider the framework provided for in the and, in due course scrutinise the detail in the first set of regulations which will have been prepared following a consultation with the relevant industry players.

Justification for the procedure

107. The temporary requirement to make payments represents a significant intervention in the electricity market, and this clause will define the main parameters of the scheme. We think that Parliament will have a particular interest in how the scheme is constructed and we think therefore that the first set of regulations should follow the affirmative procedure and that this is appropriate in

¹ Note that clause 26(10) 'de-hybridises' regulations made under the Act and treats any instrument as proceeding through the House as it was not a hybrid instrument.

order that these regulations receive the right level of Parliamentary scrutiny. However, following that first set of regulations, our view is that only minor and technical amendments are likely made within the lifetime of the duty to make payments and that as a result the negative procedure is appropriate for those sorts of amendments

Clause 16(1)(c): Power under regulations to administratively designate electricity generators for the purposes of the temporary requirement to make payments

Power conferred on: Secretary of State

Power exercised by: Administrative designation in accordance with regulations

Parliamentary Procedure: None

Context and Purpose

108. This is a specific power for the Secretary of State to provide in regulations for the administrative designation of an electricity generator for the purposes of applying the temporary requirement to make payments. This will apply where the Secretary of State had been unable to initially identify a generator for the purposes of either specifying them as a generator or specifying a description which applies to that generator. The circumstances and rules around the use of this power will be set out in the first set of regulations made under clause 16.

Justification for taking the power

109. It is the Department's view that the Secretary of State may need sufficient scope to impose the requirement to make payments on generators during the operation of the requirement to make payments even if those generators have not been specified in the original regulations imposing the requirement to make payments. This administrative power is necessary in a complex commercial environment where a complex set of factors need to be taken into account in determining the application of the requirement to make payments and where there is a chance that some generators may not be identified when the regulations are first made.

Justification for the procedure

110. The circumstances in which this power may be used will be set out in regulations, the first of which will be subject to the affirmative procedure. Parliament will therefore have the opportunity to scrutinise the possible use of this power. However, the Department's view is that once those regulations have delegated this particular power, (under the conditions provided for in the regulations) that it will be necessary for the Secretary of State to act swiftly particularly in view of the time limited nature of the scheme. We therefore think it is appropriate for this to be an administrative designation with no Parliamentary scrutiny.

Clause 16(5): powers under regulations to direct that specified electricity generators are no longer liable to make further payments under the temporary requirement to make payments regulations

Power conferred on: Secretary of State

Power exercised by: Direction in accordance with regulations

Parliamentary Procedure: None

Context and purpose

111. This is a specific power for the Secretary of State to provide in regulations for the administrative direction that an electricity generator (or description of generators) is no longer liable to make further payments for the purposes of applying the temporary requirement to make payments. This will apply where the Secretary of State needs to specify a particular electricity generator, or description of generators, that may agree unique contractual arrangements that should result in the temporary requirement to make payments disapplying, or that would otherwise cause the temporary requirement to make payments to cease applying to more generators than required. The circumstances and rules around the use of this power will be set out in the first set of regulations made under clause 16.

Justification for taking the power

112. It is the Department's view that the Secretary of State may need the scope to disapply the requirement to make payments on certain generators during the operation of the requirement to make payments, even if other generators continue to be liable. This administrative power is necessary in a complex commercial environment where a complex set of factors need to be taken into account in determining the duration of the appropriate application of the requirement and relieving certain generators of the requirement when it is no longer appropriate for them to be liable for the requirement.

Justification for the procedure

113. The circumstances in which this power will be used will be set out in regulations, the first of which will be subject to the affirmative procedure. Parliament will therefore have the opportunity to scrutinise the possible use of this power. However, the Department's view is that once those regulations have delegated this particular power (under the conditions provided for in the regulations), it will be necessary for the Secretary of State to act swiftly particularly in view of the time limited nature of the scheme and to ensure generators are not subject to the requirement for longer than is appropriate. We therefore think it is appropriate for this to be an administrative designation with no Parliamentary scrutiny.

Clause 17(1): power to administratively direct an electricity generator to provide information in connection with making regulations

Power conferred on: Secretary of State

Power exercised by: Administrative designation

Parliamentary Procedure: None

Context and Purpose

114. This is a specific power for the Secretary of State to administratively direct electricity generators to provide the Secretary of State with information that may reasonably be required in connection with making regulations under Clause 16. This will apply where the electricity generator may have key information, which could be commercially sensitive, that is important in making regulations under Clause 16, particularly subsection (3). It will be particularly important for generators to provide this information if there are particular matters that need to be taken into account in designing the nature of the payment obligation or the timing of that obligation having regard to their own particular arrangements.

Justification for taking the power

115. It is the Department's view that the Secretary of State may need timely information from electricity generators, withholding of which may negatively impact the operation of the requirement. This administrative power is necessary in a complex commercial environment where a complex set of factors need to be taken into account in determining the application of the requirement.

Justification for the procedure

116. The Department's view is that information gathering powers will be necessary for the Secretary of State to act swiftly, particularly in view of the time limited nature of the scheme. The information received under this power will be used in connection with making regulations under Clause 16, with Parliament having an opportunity to scrutinise the construction of the scheme under the affirmative procedure (with subsequent regulations subject to the negative procedure). Given the first set of regulations under Clause 16. We therefore think it is appropriate for this to be an administrative designation with no Parliamentary scrutiny.

Clause 18: Power to make regulations about contracts for difference. The Secretary of State may, by regulations, make provisions about contracts for difference.

Power conferred on: Secretary of State

Power exercised by: Regulations made by SI

Parliamentary Procedure: Affirmative Procedure for first use followed by negative procedure for second or later use. Some provision that may be made by regulations under this power is always subject to the affirmative procedure.

Context and Purpose

117. Whilst section 6 of the Energy Act 2013 already provides for the making of regulations concerned with contracts for difference (CFD) for the purposes of 'encouraging low carbon electricity generation', this new power will allow the Secretary of State to make regulations in relation to CFDs for the further (new) purpose of encouraging low carbon electricity generation by *existing* generating stations. This new power will allow CFDs to be offered to generators outside the scope of the existing CFD scheme since they have already commenced generating electricity.

Justification for taking the power

118. The regulations made in reliance on these amendments to the provisions of the Energy Act 2013 concerned with CFDs (see Chapter 2) will widen the scope of those generators who may be eligible to be offered a CFD to electricity generating stations which are already in operation. It is not felt appropriate to rely on the existing powers in the CFD provisions of the Energy Act 2013 since these are for the purpose of encouraging low carbon electricity generation, whereas the new power will explicitly allow for CFDs to be offered to existing generating stations. In consequence, the new provisions will further: allow for the designation of additional CFD Counterparties; provide a power for the Secretary of State to make regulations requiring that customers of an electricity supplier benefit, in accordance with those regulations, from payments made to the supplier by the CFD Counterparty; and allow regulations to require the necessary information-sharing between the Secretary of State, the CFD Counterparty(-ies) and the GB and Northern Irish energy regulators. The effect of the amendments is that existing regulation making powers under the Energy Act 2013 will apply for the purpose of these regulations in the same way as they apply for the purpose of CFD regulations.

Justification for the procedure

119. The amendments to the Energy Act 2013 described here will require that the implementing secondary legislation be subject to the affirmative procedure when it is first created; the Act will continue to provide for the negative procedure for subsequent regulations. As the first set of implementing regulations may include the ability to require compulsory payments and/or go to the fundamental parameters of the scheme and the level of support which may be granted to projects (including strike prices and eligibility of different technologies), it is appropriate for a greater level of parliamentary scrutiny to apply.

Clause 19: Requirement to pass on energy price support to end users

Power conferred on: Secretary of State (and the Department for the Economy)

Power exercised by: Regulations made by statutory instrument

Parliamentary Procedure: Affirmative

Context and Purpose

120. This clause will provide the Secretary of State with a power, by regulations, to impose Pass-through Requirements on Intermediaries (PRI). The Bill will require intermediaries benefiting from the Energy Price Guarantee, Energy Bill Support Scheme, or Energy Bill Relief Scheme (EBRS) to pass on the energy price support to their end users who are the intended beneficiaries of the relevant schemes. This will include heat networks which benefit from the EBRS.
121. A PRI will oblige certain persons, who are energy customers and receive energy price support, but who are themselves responsible for the supply or provision or charging for energy, to pass on the benefit they receive (or an appropriate proportion thereof) to their end users who are the intended beneficiaries of the energy price support in accordance with the terms of the regulations. The benefit to be passed on is to be specified in or determined in accordance with the regulations and must be passed on by a specified time.
122. This Clause will allow regulations to provide that the intended beneficiaries (or “end users”) of the relevant schemes may recover from an intermediary as a debt in civil proceedings an amount specified or determined in accordance with the regulations where they have not received the benefit required to be passed onto them by the PRI.
123. End users are defined in the clause, but the Secretary of State may also add to the cases in which a person is an end user of an intermediary by regulations. The purpose of this power is to make sure PRIs made in respect of future schemes can be made applicable to the correct cases of end user.

Heat networks:

124. The Secretary of State will be provided with regulation-making powers. These powers will be used to make an SI:
- a. Requiring heat suppliers to notify the Secretary of State, or an authorised person (in this case the Office for Product Safety and Standards), of addresses of buildings supplied by the network, in addition to re-notifying some matters under Regulation 3 of the Heat Networks (Metering and Billing) Regulations. Heat suppliers will be required to notify within 30 days of the SI being made to ensure the information can be shared with the Ombudsman who will investigate complaints of failure to pass through the EBRS benefit. Information which the OPSS collects on heat suppliers and their consumers will provide important evidence for the Ombudsman’s complaints handling.
 - b. requiring heat suppliers to include details about pass-through of the Energy Bill Relief Scheme in bills.
 - c. requiring heat suppliers to inform consumers that they are receiving the Energy Bill Relief Scheme, explaining how they will pass the benefit on.

- d. Providing that heat suppliers can account for special characteristics of heat networks, which may explain why some heat networks cannot pass on the full benefit of the Energy Bill Relief Scheme.
 - e. defining heat networks.
 - f. Modifying the Heat Network (Metering and Billing) Regulations 2014 to enable OPSS to be able to issue a compliance notice more easily for the purpose of enforcing the pass-through requirements.
125. The obligations placed on heat suppliers in these powers are as light touch as possible to ensure the policy functions and consumers receive the benefit of the Energy Bill Relief Scheme in their heat bills.
126. The OPSS already receives notifications under the Heat Networks (Metering and Billing) Regulations 2014 and is therefore well placed to process additional notification data.
127. The existing definition of heat networks in the Heat Networks (Metering and Billing) Regulations needs clarifying to ensure this policy is comprehensive in effect.
128. The Energy Ombudsman will be provided with powers to handle disputes between heat networks and consumers in the event the heat network does not comply with these requirements. Complaints to the Ombudsman will be limited to the following grounds:
- a. The heat supplier benefits from an energy supply contract under the EBRS but does not inform its consumers of this
 - b. The heat supplier does not inform its consumers of how it will pass on the benefit through lower heat bills
 - c. The heat supplier makes no effort to reduce its heat bills or hold bills down in line with the EBRS reduction.
129. To facilitate this, we want to provide for Part 2 of the Consumers, Estate Agents and Redress Act 2007 (relating to complaints handling and redress schemes) to apply with modifications in relation to heat network consumers in England, Wales or Scotland, and to do so by regulations. We will also provide for equivalent provision in Northern Ireland.
130. We will need to ensure that the Energy Ombudsman is able to recover fees from heat networks subject to consumer complaints so that it can cover the cost of processing and investigating those complaints.
131. A power such as this will ensure consumers see the benefit of this legislation, that the relief government is granting heat suppliers via reduced wholesale prices, is passed through to consumers in the form of lower bills.
132. These powers are part of the checks and balances to provide consumers with access to redress should they feel they are not receiving the benefits which their heat supplier is getting from the EBRS. The regulations will help to ensure heat network consumers have transparency and will work in tandem with powers in the

Heat Networks (Metering and Billing) Regulations 2014. Our expectation is that most disputes between consumers and their heat supplier will be solved before they engage the Ombudsman.

Justification for taking the power

133. The clause provides the Secretary of State with a power to impose PRIs that require intermediaries to pass through energy price support to end users.
134. This power will enable Secretary of State to place obligations on intermediaries (e.g. landlords or heat networks) to pass through energy price support to end users. This will facilitate the pass through of benefit to the intended end users who do not have a direct relationship with licensed suppliers (for example paying all-inclusive rent or on a heat network). This power is necessary to enable the Secretary of State to effectively impose these obligation on intermediaries who are a party to a diverse range of contracting structures relating to the supply, resale, provision and charging of energy, which cannot be provided for in the Bill. The power will also empower the Secretary of State to respond to circumstances relating to scheme benefits not reaching their intended beneficiaries, which are unforeseen and which may only become apparent once the support schemes begin to be delivered. This power provides assurance that the Secretary of State can tackle barriers to delivery and implementation of schemes as necessary, which mitigates the risk that scheme payments do not reach those most exposed to high energy costs. The Bill is also providing for these powers to be exercised by the Department for the Economy.

Heat networks:

135. The Bill provides the Secretary of State with powers to impose pass-through requirements on intermediaries through regulations. Heat networks are one of these intermediaries and form a part of this wider regulation-making power. Providing for these requirements and the definition of a heat network in regulations therefore ensures consistency with other pass-through requirements provided in regulations.
136. These requirements will apply to approximately 500,000 heat network consumers, with the scope of the government's energy support schemes extending to approximately 55 million gas and electricity consumers. These requirements therefore apply to a relatively small proportion of overall UK energy consumers, and we there consider them to be suitable for the level of specificity common in regulations.
137. We do not consider the detailed procedure for Alternative Dispute Resolution (ADR) appropriate for the face of the Bill and as such have made provision for regulations. This is because the requirements on heat networks to inform consumers of how their heat bill will reduce in line with the EBRs will be made through regulations under Clause 19 of the Bill on Passthrough Requirements on Responsible Intermediaries. We therefore need regulations on the Ombudsman, charged with enforcing said requirements, to also be made through regulations under the same clause.

Justification for the procedure

138. The Government considers that the affirmative procedure is appropriate to ensure that the appropriate level of scrutiny is given to regulations made under this power on the basis they will impose obligations on persons and that this may give rise to a potential civil cause of action for recovery of a debt. Regulations made under this power within six months of Royal Assent to the Bill will be subject to the made affirmative procedure and any regulations made after this initial period will be subject to the draft affirmative procedure. The made affirmative procedure is appropriate in the initial six-month period because PRIs need to be put into place immediately so that energy price support is passed through to end users who are the intended recipients of the support measures when the schemes commence or as quickly as possible.
139. We consider the made affirmative procedure is appropriate for the procedural matters of ADR implementation because we are introducing requirements on business and therefore potentially costs. Heat suppliers subject to consumer complaints which are investigated by the Ombudsman may need to pay a complaints fee to the Ombudsman.
140. These limited costs are far outweighed by the clear benefits this policy will bring to consumers – ensuring they can efficiently seek redress and ensuring heat suppliers pass on the benefit from the EBRS.
141. We consider the made affirmative procedure is appropriate for these powers. We will be introducing new requirements on heat networks, including additional notification requirements to the OPSS and the requirement to inform consumers of the EBRS cost reduction. This will increase costs on business albeit to a minimal degree.
142. Such costs will be outweighed by the benefits of the policy – ensuring heat network consumers receive the benefit of EBRS. It will also make regulation and enforcement more effective and efficient.
143. However, we consider that the impact on businesses makes these regulations suitable for parliamentary scrutiny.

***Clause 21: Power of Secretary of State to modify energy licences etc.
Paragraph 1(1) of Schedule 5: Power for the Department for the Economy to concurrently exercise the power of the SoS provided for in clause 21***

*Power conferred on: Secretary of State and the Department for the Economy
NI*

Power exercised by: Notice

Parliamentary procedure: Provisions would not be subject to Parliamentary procedure

Context and Purpose

144. This power will enable the Secretary of State to modify GB and NI energy licences and associated documentation by issuing a Notice setting out the modification and its effect and specifying the date from which the modification will take effect.
145. Paragraph 1(1) of Schedule 5 to the Bill provides that the power conferred on the SoS under clause 21 may be exercised concurrently by the Department for Economy.

Justification for taking the power

146. The power is to enable the Secretary of State to modify energy licence conditions urgently as necessary, including in response to the energy crisis. This power may be used to facilitate the delivery of key energy support schemes, including the Northern Ireland Energy Bills Support Scheme (NI EBSS), the Alternative Fuel Payment (domestic) and the Alternative Fuel Payment (non-domestic). The detail of how these schemes will work are intended to be laid out in a Direction from the Secretary of State issued under clause 22. The power may be used to support implementation of such a Direction - under clause 22 - concerning the above schemes, as well as the heat network fund for the £100 payment to domestic heat network consumers.
147. The Department considers it is necessary to provide the technical details of how NI EBSS, AFP (domestic) and AFP (non-domestic) will be delivered through a Direction issued to electricity suppliers. This approach allows a fuller period of engagement and consultation with relevant stakeholders to discuss the terms of the schemes, allows sufficient scope for the further iteration of the schemes, and provides suppliers with earlier certainty on what the technical delivery requirements will likely be. This process would not be able to be undertaken if the technical detail was set out in primary legislation and may jeopardise delivery of support this winter and weaken delivery confidence.
148. Currently modifications to licence conditions take at least three months, because there are minimum consultation and standstill periods before changes can come into effect. Clause 21 has no such minimum time periods. If the Secretary of State considers it appropriate, he may publish a notice making modifications to licence conditions which take effect on the same day.
149. The Department considers it appropriate to be able to make these required modifications by Notice in case further modifications are needed to respond to improvements or developments in design. A delay to this change could have negative consequences for those meant to benefit from the schemes, or value for money from the schemes.
150. This power will provide the Department for the Economy with the discretion to similarly modify electricity licences in Northern Ireland.

Justification for the procedure

151. The Department considers it appropriate that notices are made and this procedure does not require parliamentary oversight. Primary legislation sets out publication of Notices must be in a manner appropriate to bring the Notice information to affected stakeholders. The Department will give regard to this and continue engagement with electricity suppliers on the delivery of its support schemes.
152. This procedure and approach will allow the SoS/Department for the Economy to proceed at pace which may enable delivery of NI EBSS, AFP (domestic) and AFP (non-domestic) and the heat network fund as soon as feasible, providing crucial support this winter. Alternative parliamentary approaches would not provide sufficient certainty that the necessary licence modifications would be able to be made at the earliest opportunity. This approach avoids the risk of delay in making the modifications which might inhibit suppliers making the necessary operational changes to reflect anticipated or new licence conditions and may slow or risk delivery of the schemes this winter.
153. This power is also partly modelled on Article 14 of the Electricity (NI) Order 1992, which permits the Utility Regulator to issue Notices in Northern Ireland and Section 11A(1)(b) of the Electricity Act 1989 which permits the Gas and Electricity market authority to do in the same in respect of Great Britain.

Clause 22: Power of Secretary of State to give directions - Paragraph 1(1) of Schedule 5: Power for the Department for the Economy to concurrently exercise the power of the SoS provided for in clause 22

Power conferred on: The Secretary of State and Department for the Economy NI

Power exercised by: Direction

Parliamentary procedure: Provisions would not be subject to Parliamentary procedure

Context and Purpose

154. This power will enable the Secretary of State to issue Directions, in response to the energy crisis, to the Northern Ireland energy regulator, and those who hold energy licences. Compliance with any such Direction issued under clause 22 is a relevant requirement against which Ofgem and the Northern Ireland Utility Regulator (UREGNI) can enforce compliance using their existing enforcement powers. This approach provides important enforcement options, strengthens delivery assurance and supports effective management of public money.
155. Paragraph 1(1) of Schedule 5 to the Bill provides that the power conferred on the SoS under clause 22 may be exercised concurrently by the Department for Economy. The Electricity (Northern Ireland) Order 1992 provides that the Northern Ireland Utility Regulator can issue Directions to licence holders in relation to any

matters specified in a licence, which licence holders are required to comply with. This power provides the Department for the Economy with a similar power.

Justification for taking the power

156. This power will enable the Secretary of State to issue Directions, including but not limited to matters related to energy supplier licence conditions or a domestic energy price reduction scheme. This power is essential to allow the operation of NI EBSS, the AFP (domestic) and the AFP (non-domestic) support schemes. This power will be used to set out the exact terms of NI EBSS, the AFP (Domestic) and the AFP (Non-Domestic) support schemes (for the latter, details on the chosen delivery mechanism will be confirmed shortly) with which electricity suppliers will need to comply. This approach permits a fuller period of necessary engagement with stakeholders regarding scheme delivery detail, it allows sufficient scope for iteration of these schemes, and it would be disproportionate to set out this level of granular technical and delivery detail through primary legislation.
157. This broader power is also necessary to enable the Secretary of State to react to circumstances, which are unforeseen and may become apparent in relation to the delivery of these schemes. This will ensure the Secretary of State is appropriately empowered to direct electricity suppliers and other parties who will likely be involved. This power provides assurance that the Secretary of State can tackle barriers to delivery and implementation of the schemes as necessary, which mitigates the risk that relevant payments are not made.
158. For the EPG NI, it is also anticipated that the power for the Secretary of State and the Department for the Economy to issue directions could be used to coordinate the timing of changes to regulated prices in Northern Ireland and Great Britain to ensure the efficient administration of the schemes.
159. This power will provide the Department for the Economy with the discretion to issue Directions in respect of matters that are specified in Northern Ireland licence conditions. When the Northern Ireland Executive is restored, this power will enable the Department for Economy to take forward implementation of the policies being established there.

Justification for procedure

160. The Department considers it appropriate that Directions can be issued and this procedure does not require parliamentary oversight. There is a limitation provided for in the Bill in that the exercise of the power must be in response to the energy crisis or for one of the other specified purposes. This procedure will allow the SoS/Department for the Economy to proceed at pace to ensure the delivery of support as soon as feasible and tackle challenges with implementation and enforcement, including those unforeseen, to avoid comprising delivery of support to customers this winter.
161. This power and procedure is partly modelled on Article 11(3) of the Electricity (Northern Ireland) Order 1992, which currently permits the Utility Regulator to issue Directions in Northern Ireland to licence holders and Section 7(3) of the

Electricity Act which permits the Secretary of State with the same power in respect of Great Britain.

162. This power largely replicates the existing power provided to the Utility Regulator in Article 11(3) of the Electricity (Northern Ireland) Order 1992, to the Department for the Economy, and replicates the existing approach to making delegated legislation.

Clause 23, Schedule 4 para 3(4) power of Secretary of State to extend the time before the cessation of effect of Schedule 4

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

163. Schedule 4 makes provision relating to the regulation of the Northern Ireland energy market. The Schedule ceases to have effect after the first period of 6 months in which a functioning government has been in place in Northern Ireland. The Secretary of State may extend the date in which Schedule 4 ceases to take effect by regulations under this power.

Justification for taking the power.

164. It is envisaged that the six-month period will enable the devolved government in Northern Ireland to make such alternative provision in this devolved area at it considers necessary. However, should the Northern Ireland Executive require a longer period, this power enables the Secretary of State to defer the expiration of the provisions at Schedule 4. This would only happen at the express request of the Northern Ireland Executive. This is a sensible precaution, should there be any issues with passing the schemes across to the Northern Ireland Executive when the devolved government returns

Justification for the procedure

165. The Secretary of State may only extend the 6-month sunset period with the express approval of Parliament.

Clause 24, Schedule 5 para 7(3) power of Secretary of State to extend the time before the cessation of effect of Schedule 4

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Context and Purpose

166. As noted elsewhere in this memorandum, the Bill provides for concurrent exercise of powers by the Secretary of State and the Department for the Economy in Northern Ireland. Schedule 5 paragraph 1 sets out which powers in the Bill may be exercised by the Department and the remainder of Schedule 5 makes provision in respect the exercise of those powers, including limitation thereon and necessary modifications. The powers conferred by the Schedule cease to have effect after the first period of 6 months in which a functioning government has been in place in Northern Ireland. The Secretary of State may extend that date by regulations under this power.

Justification for taking the power.

167. It is envisaged that the six-month period will enable the devolved government in Northern Ireland to make such alternative provision in this devolved area as it considers necessary. However, should the Northern Ireland Executive require a longer period, this power enables the Secretary of State to defer the expiration of the Department's powers listed at Schedule 5. This would only happen at the express request of the Northern Ireland Executive. This is a sensible precaution, should there be any issues with passing the schemes across to the Northern Ireland Executive when the devolved government returns

Justification for the procedure

168. The Secretary of State may only extend the 6-month sunset period with the express approval of Parliament.

Clause 27(1): Power of Secretary of State to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Amendments to primary legislation passed before, or in the same Session as, this Act will be subject to the affirmative procedure (Henry VIII power in respect of consequential amendments to primary legislation); any other amendments will be subject to the negative procedure

Context and Purpose

169. This clause will grant the Secretary of State the power to make provision consequential on this Act, or regulations under this Act.

170. As schemes under the Act are developed and implemented it is foreseeable that changes to existing primary or secondary legislation will be needed to ensure the schemes operate as intended. In particular, consequential amendments may be needed to schemes emanating from previous legislation which interact with any schemes under this Act.

Justification for taking the power

171. Such amendments may be needed because something within one or more schemes is preventing effective delivery of one or more other schemes, a new interaction of interdependency between schemes is identified or an unforeseen change in circumstance means the scheme(s) need to be adapted.
172. The nature and extent of some consequential or supplementary requirements, including the necessary legislative amendments, may not become apparent until after the Bill is in force and the practical impact of the new schemes alongside existing schemes can be seen. To include all the necessary consequential and supplementary provisions in the Bill would significantly increase the size of the Bill and take up a considerable amount of Parliamentary time.
173. The alternative to taking this power through secondary legislation is to list all the amendments required in the Bill itself, and that could only be done if all the schemes were established in the Bill rather than through subordinate legislation. To do so would present numerous risks, such as technical errors or omissions in the Bill.

Justification for the procedure

174. The Government considers that the affirmative procedure is appropriate for regulations made under this power to the extent that the power is used to amend primary legislation. With respect to amendments to other secondary legislation, we consider that the negative procedure is appropriate.

Clause 27(2): Power of Secretary of State to make provision which the Secretary of State considers appropriate.

Power conferred on: Secretary of State (and Department for the Economy)

Power exercised by: Regulations

Parliamentary Procedure: Amendments to primary legislation passed before, or in the same Session as, this Act will be subject to the affirmative procedure (Henry VIII power in respect of consequential amendments to primary legislation); any other amendments will be subject to the negative procedure

Context and Purpose

175. This clause will grant the Secretary of State the power to make regulations which may make provision which the Secretary of State considers appropriate in connection with a domestic energy price reduction scheme, or anything done or proposed to be done under, or given effect by, section 13 (power of the Secretary of State to give support for meeting energy costs etc) or any other provision of the Act and regulations made under it.
176. As schemes under the Act are developed and implemented it is foreseeable that changes to existing primary or secondary legislation will be needed to ensure

the schemes operate as intended. In particular, provision may be needed to modify schemes emanating from previous legislation which interact with any schemes under this Act.

Justification for taking the power

177. Such amendments may be needed because something within one or more schemes is preventing effective delivery of one or more other schemes, a new interaction of interdependency between schemes is identified or an unforeseen change in circumstance means the scheme(s) need to be adapted.

178. The nature and extent of some regulatory provision that might need to be made for provision in connection with a domestic energy price reduction scheme, or anything done under section 13, or other provision of the Act or regulations under it may not become apparent until after the Act is in force and the practical impact of the new schemes alongside existing schemes can be seen. The Bill is also providing for these powers to be exercised by the Department for the Economy.

Justification for the procedure

179. The Government considers that the affirmative procedure is appropriate for regulations made under this power to the extent that the power is used to amend primary legislation. With respect to amendments to other secondary legislation, we consider that the negative procedure is appropriate.

Clause 27(3): The power for Secretary of State to make transitional, transitory or saving provision.

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: No procedure as transitional provision

Context and Purpose

180. This clause will give the Secretary of State the power to make transitional, transitory or saving provisions for any provisions which cease to have effect or any power which ceases to be exercisable under Schedule 4, 5 or 6.

Justification for taking the power

181. Such amendments may be needed when a Northern Ireland Executive is formed and the running of the support schemes is passed onto the Department for the Economy. In this situation it may be the case that something within one or more schemes needs to be altered to enable an effective handover of scheme administration.

182. This can also be used in the context of sunseting of the relevant schemes.

Justification for the procedure

There is no procedure for this type of provision as Parliament has approved the legislation (and, in this case, the expiry of aspects of the legislation) and therefore this provision is only needed to facilitate the legislation coming into force (or expiring).

Schedule 6, Paragraph 8: Power to amend the time limit in paragraph 8 subparagraph (1) to extend the time during which the regulations imposing the temporary requirement to make payments continue to apply

Power conferred on: Secretary of State

Power exercised by: Regulations made by SI

Parliamentary Procedure: Affirmative (Henry VIII power)

Context and Purpose

183. Schedule 6 Paragraph 8 subparagraph (1) provides that regulations made under Clause 16 may not require payments to be made in respect of a period which expires after the end of a period of 5 years. Subparagraph (2) enables the Secretary of State to amend that time limit to specify a longer period.

Justification for taking the power

184. It is currently uncertain how long the current energy crisis will continue and, in that context, it is not certain when the need for the temporary requirement on generators to make payments will end. Whilst the Department has tried to estimate a reasonable period based on our best estimates this is inevitably subject to events which are outside our control. The Department's view therefore is that it is reasonable to take a limited power to amend the time limit to substitute a longer period should events and market conditions justify such a longer period.

Justification for procedure

185. Because this will amend the Act and because we accept that extending the temporary requirement to make payments is a significant step, the Department's view is that these regulations should follow the affirmative procedure.

Schedule 6, Paragraph 9: Disapplication of the expiry provisions (sunset) of the Bill

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Context and Purpose

186. This paragraph allows the Secretary of State to extend any of the support schemes under the Bill for further periods of 6-month intervals.

Justification for taking the power

187. Having the ability to extend the support schemes and the spending power that underpins them will ensure that the Government can provide support to households and businesses throughout the crisis should that last longer than is currently anticipated.

188. Without invoking this power the schemes under clauses 1-3 and 3-7 will expire after 2 years and the power at clause 13 would cease to be exercisable after 3 years and 6 months.

Justification for the procedure

189. The Government considers that the affirmative procedure provides an appropriate level of Parliamentary scrutiny for extending the sunset period for any of the schemes. This approach mirrors the Coronavirus Act 2020, which provided that spending powers should be “sunsetting” and that the sunset provision could be disapplied for periods of 6 months at a time by the made or the draft affirmative procedure.

**Department for Business, Energy and Industrial Strategy
17 October 2022**