

UTILITIES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part I: New Regulatory Arrangements

Sections 1 - 8 and Schedules 1 - 3: New Regulatory Arrangements

9. These sections and the schedules establish the Gas and Electricity Markets Authority, and the Gas and Electricity Consumer Council, and provide for the drawing up of a memorandum between the two bodies to ensure effective co-operation between them.
10. *Section 1 and Schedule 1* establish the Authority. The Authority takes the place of the existing offices of the Director General of Gas Supply and the Director General of Electricity Supply. These offices are, in consequence, abolished. The Authority will be a body corporate and will comprise a chairman and at least two other members appointed by the Secretary of State, who will be required to consult the chairman in respect of the appointment of the other members. As a Non-Ministerial Government Department, the Authority will be a Crown body and its staff will be civil servants.
11. *Schedule 1* sets out detailed provisions for the appointment and terms and conditions of members of the Authority. It also sets out provisions relating to the staff and procedures of the Authority. Provision for the financing of the Authority is contained in section 107.
12. *Section 2 and Schedule 2* abolish the existing consumer bodies (the Gas Consumers' Council and the electricity consumers' committees) and establish the Gas and Electricity Consumer Council. The Council will be a body corporate. Its members will be appointed by the Secretary of State. The Act does not lay down any limit on the number or qualifications of members, except that the Secretary of State must have regard to the desirability of appointing one or more persons who are or have been disabled, or have experience of work with disabled people. Members, other than the chairman, will be appointed following consultation with the chairman of the Council. The Council will not be a Crown body, and its staff will not be civil servants. It will have the status of a Non-Departmental Public Body.
13. *Schedule 2* sets out detailed provisions for the appointment and terms and conditions of members of the Council. It also sets out provisions affecting the staff of the Council, and about financial and procedural matters. Paragraph 5(3) of Schedule 2 and paragraph 44 of Schedule 6 secure that staff of the Council are eligible to be members of the Principal Civil Service Pension Scheme even though they will not be Civil Servants.
14. *Section 3 and Schedule 3* provide for the transfer of the functions of the Director-General of Gas Supply and the Director-General of Electricity Supply to the Authority. The section also transfers the property, rights and liabilities of the Gas Consumers' Council (GCC) to the new Council. In addition, the section and the schedule give the Secretary of State powers to make schemes to transfer the property, rights and liabilities of the Directors-General to either the Council or the Authority as appropriate. Paragraph 9 of Schedule 3 ensures that there is no break in the continuity of employment of staff

*These notes refer to the Utilities Act 2000 (c.27)
which received Royal Assent on 28th July 2000*

transferring to the Council from either the GCC or the Office of Gas and Electricity Markets (OFGEM).

15. *Section 4* requires the Authority and the Council to consult on draft “forward work programmes”, and then to publish the final versions. The forward work programmes must contain a description of the non-routine projects which the bodies plan to undertake during the year and their associated objectives, together with an estimate of overall expenditure. The Authority and Council could include additional information in their forward work programmes.
16. *Section 5* requires the Authority to make an annual report to the Secretary of State which is to be laid before each House of Parliament. The section identifies what should be included in the report. The equivalent provision for the Council is provided at paragraph 6 of Schedule 2.
17. *Section 6* enables the Authority to publish information and advice which it thinks would promote the interests of consumers, although it must have regard to the need to avoid - so far as is practicable - serious and prejudicial effects. It must consult any individual or body to whom advice or information relates before publishing any information.
18. *Section 7* requires the Council and the Authority to draw up a memorandum setting out the arrangements for co-operation between them. The memorandum is to be sent to the Secretary of State who will lay the document before Parliament. The detailed contents of the memorandum are for the parties to agree, and can be amended over time. However, examples of the ground that might be covered in the document include the arrangements for:
 - consultation between the parties, for example, on forward work programmes and the co-ordination of work on consumer-related issues;
 - the co-ordination of requests for information from the utility companies to avoid unnecessary duplication; and
 - establishing a common understanding of the tests for the disclosure of information.
19. *Section 8* gives the Authority powers to modify licence conditions to ensure the recovery of the ongoing costs of the Authority and the Council, and to recover any costs (including preparatory costs) incurred by the Secretary of State in setting up the new bodies. Modifications can be made without a reference to the Competition Commission, but the Authority is required to consult licence holders before using these powers. There is provision to permit the Directors-General, the Secretary of State, or all three, to undertake this consultation in advance of the establishment of the Authority. These powers to modify payment conditions in licences are time-limited to two years from the date of commencement of the section. The section gives the Secretary of State a power to issue directions to the Authority on the inclusion of payment conditions in licences relating to the expenses of the Council, and the expenses of the Secretary of State in relation to the establishment of the Authority and the Council. This power of direction is intended to safeguard the financial independence of the Council from the Authority by ensuring that the maintenance of appropriate payment conditions in licences is not exclusively a matter for the Authority.