

ENERGY ACT 2010

EXPLANATORY NOTES

PART 3: REGULATION OF GAS AND ELECTRICITY MARKETS

Summary and Background

73. The regulation of the gas and electricity markets in Great Britain is carried out by Ofgem, the unified regulator established by the Utilities Act 2000. The Secretary of State has some limited functions relating to the regulation of the gas and electricity markets, but the vast majority of functions are exercised by Ofgem. Separate arrangements are in place in Northern Ireland.
74. Ofgem's key functions are to license activity in the gas and electricity markets; control the charges for and access to the monopoly networks; supervise the numerous industry codes that govern the complex contractual and operational relationships between industry players and act concurrently with the Office of Fair Trading in applying general competition law in the gas and electricity markets.
75. This Part contains a number of provisions relating to the market framework with the intention of ensuring the framework promotes the delivery of secure and low carbon energy supplies whilst continuing to protect consumers.

General duties of the Gas and Electricity Markets Authority and the Secretary of State

76. In carrying out its duties, Ofgem must act according to its objectives as set out in statute. Ofgem has a principal objective to protect the interests of existing and future consumers. Wherever it is appropriate to do so, it must fulfil that principal objective by promoting effective competition. Before this Act the interests of consumers were not defined. Ofgem must also take into account a range of secondary objectives.
77. It is the Government's view that reducing greenhouse gas emissions (in order to mitigate climate change) and ensuring secure energy supplies are both in the interests of future and existing consumers and should be considered as such by Ofgem when carrying out its functions. The Government does not intend to change Ofgem's principal objective nor to create multiple principal duties through these provisions, but to ensure that in its interpretation of its existing principal objective of protecting consumers, Ofgem gives due weight to the need to reduce greenhouse gas emissions and ensure security of supply.
78. Competitive solutions may take time to deliver, and the market may create barriers for some groups of consumers so that the promotion of competition may not be the most effective means of protecting their interests. These provisions clarify that Ofgem should consider using alternative types of solution to address the consumer detriment instead of, or alongside, measures to promote competition. Such solutions could include strengthened licence conditions and enforcement action, or other means that would prevent certain types of market behaviours.
79. These clarifications will also apply to those limited functions carried out by Scottish Ministers under the Acts.

Commentary on Sections

Section 16: Amendments of section 4AA of the Gas Act 1986 (c. 44)

80. This section amends the principal objective and general duties of the Secretary of State and Ofgem as set out in section 4AA of the Gas Act 1986.
81. The amendments clarify the relationship between the principal objective and the obligation to further this objective through the promotion of competition wherever appropriate. Subsection (2) amends section 4AA(1) of the Gas Act 1986 to remove the reference to ‘promoting effective competition’. The reference to promoting competition is re-inserted in the new subsection (1B) (see subsection (3) of section 16) in which it is combined with the general duties in section 4AA(2) as to how the Secretary of State and Ofgem are to carry out their functions (see paragraph 79 below).
82. Subsection (3) adds three additional subsections (1A, 1B and 1C), between subsections (1) and (2) of section 4AA of the Gas Act 1986, to clarify the interests of consumers and how the Secretary of State and Ofgem are to carry out their functions.
83. The new subsection (1A) of section 4AA makes it clear that the interests of consumers include their interests in the reduction of greenhouse gas emissions caused by the shipping, transportation or supply of gas, and their interests in a secure supply of gas. Subsection (7) inserts a new subsection 4AA(5B) which inserts definitions for the purposes of new subsection (1A), and adopts the meanings of some words used in the Climate Change Act 2008.
84. The new subsection (1B) closely follows the phrase that was removed from section 4AA(1) by subsection (2) of section 16. It requires the Secretary of State or Ofgem to carry out their functions (in relation to the supply of gas) in a way best calculated to protect the interests of consumers, using the promotion of competition to do so where that is appropriate.
85. The new subsection (1C) provides that when carrying out their functions the Secretary of State or Ofgem must consider:
- to what extent the interests of consumers are protected by actions focused on the promotion of competition, and
 - if there are any other actions (whether or not they would promote competition) that might better protect the interests of consumers.
86. Subsections (4), (5), (6) and (8) make minor amendments to take account of the new subsections 4AA(1A), 4AA(1B) and 4AA(1C). Subsection (4) also makes a minor amendment to ensure that any financial obligations which may be imposed under this Act are taken into account when the Secretary of State or the Authority are having regard to the need for licence holders to finance their activities.

Section 17: Amendments of section 3A of the Electricity Act 1989 (c. 29)

87. This section amends the principal objective and general duties of the Secretary of State and Ofgem in section 3A of the Electricity Act 1989 in a similar manner to the amendment of section 4AA of the Gas Act 1986 by section 16.
88. The amendments clarify the relationship between the principal objective and the obligation to further this objective through the promotion of competition wherever appropriate. Subsection (2) separates the two by amending subsection 3A(1) of the Electricity Act 1989 to remove the reference to ‘promoting effective competition’. The reference to promoting competition is re-inserted in the new subsection (1B) (see subsection (3) of section 17) in which it is combined with the general duties in section 3A(2) as to how the Secretary of State and Ofgem are to carry out their functions) by subsection (3) (see paragraph 89 below).

89. Subsection (3) adds three additional subsections (1A, 1B and 1C) between subsections (1) and (2) of section 3A of the Electricity Act 1989 to clarify the interests of consumers and how the Secretary of State and Ofgem are to carry out their functions.
90. The new subsection (1A) of section 3A makes it clear that the interests of consumers include their interests in the reduction of greenhouse gas emissions caused by the transmission, distribution, generation or supply of electricity, and their interests in a secure supply of electricity. Subsection (7) inserts a new subsection 3A(5B) which inserts definitions for the purposes of new subsection (1A), and adopts the meanings of some words used in the Climate Change Act 2008.
91. The new subsection (1B) closely follows the phrase that was removed from subsection 3A(1) by subsection (2) of section 17. It requires the Secretary of State or Ofgem to carry out their functions (in relation to the supply of electricity) in a way best calculated to protect the interests of consumers, using the promotion of competition to do so where that is appropriate.
92. The new subsection (1C) provides that when carrying out their functions the Secretary of State or Ofgem must consider:
- to what extent the interests of consumers are protected by actions focused on the promotion of competition, and
 - if there are any other actions (whether or not they would promote competition) that might better protect the interests of consumers.
93. Subsections (4), (5), (6) and (8) make minor amendments to take account of the new subsections 3A(1A), 3A(1B) and 3A(1C). Subsection (4) also makes a minor amendment to ensure that any financial obligations which may be imposed under this Act are taken into account when the Secretary of State or the Authority are having regard to the need for licence holders to finance their activities.

Exploitation of electricity trading and transmission arrangements

Summary & Background

94. On 30 March 2009 Ofgem launched a consultation on *Addressing Market Power Concerns in the Electricity Wholesale Sector – Initial Policy Proposals*¹. This initiative reflected the regulator's observation that the current market structure, coupled with limitations in physical transmission capacity in some areas, allows companies to exploit unduly the market in a way that results in higher bills for the consumer. During a recent investigation Ofgem also found that their existing competition law powers were unlikely to be effective due to difficulties in identifying the market in which a company could be perceived as dominant² and the possibility of companies having substantial market power without being dominant as understood in competition law. Their consultation considered a number of ways in which this regulatory loophole could be addressed, including the introduction of a Market Power Licence Condition (MPLC).
95. Under the electricity market arrangements in Great Britain (the British Electricity Transmission and Trading Arrangements) generation companies are entitled to operate power stations without taking into account network limitations. This would not be an issue if the existing transmission network had sufficient capacity to send the required electricity to and from all parts of Great Britain but, in some areas, the existing capacity of the wires does not always allow this. Such scenarios are called transmission-related 'constraints' and require action to be taken by the system operator³, National Grid, to ensure that supply and demand is balanced on both sides of this constraint.

¹ See www.ofgem.gov.uk/CustomPages/Pages/ArchivedPublications.aspx.

² For the purposes of the ongoing balancing actions, the geographic definition of the 'electricity market' will be subject to constant change.

³ The system operator is responsible for the operation of the national electricity transmission system.

96. Currently, the most significant constraint boundary is that between Scotland and England (known as the “Cheviot Boundary”) and the most common scenario is one known as an ‘export constraint’, where there is too much generation ‘behind’ a constraint (in the smaller region – Scotland) and it cannot be transmitted to the larger region (England). The reverse scenario, where there is too much generation in the larger region, is known as an ‘import constraint’.
97. To balance supply and demand, National Grid can accept, as part of the ‘balancing mechanism’⁴, both ‘offers’ to increase generation and ‘bids’⁵ to reduce generation at specific plants. They may also have long term bilateral contracts in place with companies, including a category called inter-trip contracts. These involve National Grid paying the company an ‘arming fee’ that, via an automated trip-switch, means a particular plant could be taken off the system if the network becomes overloaded. This ‘tripping’ happens very rarely, nationally less than once a year, but the existence of inter-trip contracts allows National Grid to increase safely the electricity flow on the system and, therefore, is an effective way of expanding the available capacity of the network.
98. Ways in which companies could unduly exploit the above arrangements are by:
- manipulation of where electricity is generated in order to achieve excess profit from either ‘offers’ or ‘bids’ in the balancing mechanism. This hinges on whether, because of the limited number of generation plants in particular locations, the company can predict when National Grid would have no choice but to accept an offer or bid from them to be able to balance electricity supply and demand. In this case the consumer may meet costs over and above those expected if power stations operate in economic merit order;
 - making exploitative ‘bids’ to take advantage of both being behind an ‘export constraint’ and being the only company with which National Grid can arrange balancing actions. For example, they may be the only generator available to reduce output in a particular location and so can name their ‘bid’ price and/or they might use such a locational advantage to extract unduly high ‘arming fees’ for inter-trip contracts with National Grid.
99. These sections will allow the Secretary of State to introduce a licence modification that will enable Ofgem to use its existing licensing powers to monitor and act on any examples of the actions described in paragraph 90 above. The objective is to provide a targeted and proportionate provision that will address the exploitation of market power whilst avoiding unnecessary uncertainty in the electricity wholesale market in Great Britain which could undermine investment in generation and, hence, security of energy supply.
100. The sections will not provide the long-term solution to the problem of ‘constraints’ – this will be resolved by the increased transmission capacity that will be delivered between now and approximately 2015 with additional capacity expected to be delivered by 2018. Reinforcement work on the Cheviot Boundary is already underway. The Energy Network Strategy Group (chaired by DECC and Ofgem) set out a vision for the network for 2020 needed to support a low carbon energy system⁶. The sections will, however, give protection to the consumer during a time when the required upgrading of the transmission system may create more potential for exploitation to occur. Using primary legislation to introduce the MPLC will also allow the introduction of a tailored

4 The wholesale market is divided into 30 minute periods for trading purposes and ‘normal’ trading occurs until one hour prior to the start of each period – a point known as ‘gate closure’. After gate closure electricity generators and purchasers may not trade any further with each other, but may trade with National Grid. The ‘balancing mechanism’ is one market arrangement by which such trading with National Grid occurs.

5 Importantly, a ‘bid’ put forward by a company equates to an amount that *they* will pay National Grid not to generate. The company will, however, still realise a net financial benefit because it will have already received payment from its original contract with a supplier to produce electricity, while saving on avoided fuel and other costs by not running.

6 <http://www.ensg.gov.uk/index.php?article=126>

appeals process, which provides the generation companies the right to appeal directly to the Competition Appeal Tribunal (CAT) against enforcement orders or penalties imposed by Ofgem.

Commentary on Sections

Section 18: Power to make modifications

101. Subsection (1) provides the Secretary of State with the power to introduce a modification to electricity generation licences (including standard conditions incorporated in licences and documents maintained in accordance with the conditions of licences (such as industry codes) or agreements that give effect to those documents). When exercising powers under this section, the Secretary of State (and Ofgem) must carry out functions in accordance with the principal objective and general duties set out in sections 3A to 3D of the Electricity Act 1989 (section 30).
102. Subsection (2) limits the power in subsection (1) so that it may only be exercised for the purpose of limiting or eliminating the circumstances in which a generation licence holder may obtain excessive benefits from electricity generation in a particular period. Subsection (3) provides that a licence holder will be taken to obtain an excessive benefit if they have entered into arrangements regarding the generation of electricity with the transmission system operator and one or more of the conditions set out in subsections (4)-(7) is met. These conditions are:
- the licence holder does not notify electricity generation that would have been economic to carry out and may receive excessive payments in connection with an increase in electricity generation in the relevant period;
 - the licence holder may pay an excessively low amount, or may receive an excessively high amount, in connection with a reduction in electricity generation in the relevant period;
 - the licence holder is paid an excessively high amount for an inter-trip arrangement; or
 - there is an increase or reduction in the licence holder's electricity generation in a specific period, compared to their notified generation, as a result of which the licence holder may obtain an excessive benefit.
103. Subsection (8) provides that modifications may include provisions relating to operation of power stations, amounts payable to generation licence holders or offers by the licence holder to pay amounts.
104. Subsection (9) requires the Secretary of State to consult on the detail of any modification made under subsection (1) before it is implemented. Those consulted must include any generation licence holders, Ofgem and such other persons as the Secretary of State considers appropriate. Subsection (10) specifies that this requirement may be satisfied by consultation either before or after the passing of the Act.
105. Subsections (11) to (14) contain definitions and interpretation provisions for the purposes of this section. In particular, subsection (11) specifies the meaning of "notified electricity generation" for a period, and subsection (12) defines references to an increase or reduction in electricity generation in a period.

Section 19: The Authority's interpretation and enforcement of modifications

106. This section requires Ofgem to publish a document that will set out how they will approach the interpretation and enforcement of the MPLC. Before publishing the document, subsection (2) requires Ofgem to consult generation licence holders, the Secretary of State and any other persons they consider appropriate. This consultation may occur before or after commencement of this power.

Section 20: Final and provisional orders: appeals

107. This section sets out a special process for appealing against any order which Ofgem makes under section 25 of the Electricity Act 1989 (“Orders for securing compliance”) for the enforcement of the MPLC. Subsection (2) allows licence holders who are the subject of an order to appeal to the Competition Appeal Tribunal (“the CAT”) against the order. Under subsection (3), the CAT can decide whether it wishes to decide on all or part of the matter, or whether it wishes to remit all or part of the matter back to Ofgem (or, indeed, do both). Subsection (4) provides for what the CAT may do in the event it re-determines an appealed matter: permitting it to uphold, set aside or substitute its own final or provisional order.
108. Appeals to the CAT will be subject to the Tribunal’s rules, and subsection (6) provides that subsections (2) to (5) will be subject to those rules.
109. Subsection (7) prevents an order for securing compliance from being challenged by any form of legal proceedings other than an appeal to the CAT under this section. Subsection (8) provides that any decision by the CAT will have the same effect, and will be enforced in the same manner, as a decision of Ofgem.

Section 21: Penalties: appeals

110. This section allows generation licence holders to appeal to the CAT regarding a penalty imposed by Ofgem under section 27A of the Electricity Act 1989 in relation to the MPLC. Subsection (2) provides that an appeal can be made against the imposition of a penalty, the size of that penalty and the date on which they have been directed to pay the whole, or part, of that penalty. Subsection (3) enables the CAT to uphold the penalty, set aside the penalty, substitute another amount for the penalty or vary the date by which the penalty, or any part of it, is required to be paid.
111. This section has a number of provisions that are identical to those in section 20. Any decision by the CAT will have the same effect, and will be enforced in the same manner, as a decision by Ofgem (subsection (7)). Furthermore, appeals to the CAT will be subject to the Tribunal’s rules, and subsections (2) to (4) are subject to those rules (subsection (5)). Subsection (6) ensures that it will not be possible to challenge penalties imposed by Ofgem except by an appeal to the CAT under this section.

Section 22: Further appeals

112. This section provides for further appeals from specified decisions of the CAT to appropriate courts (the Court of Appeal or, in Scotland, Court of Session).

Section 23: Expiry of power

113. Subsection (1) ensures that there is a limited time period within which an MPLC can be in force. This period is initially 5 years, but subsection (2) allows the Secretary of State to make an order to extend this period by up to 2 years. Before making any such order, subsection (4) requires the Secretary of State to consult generation licence holders, Ofgem and any other appropriate person.
114. Subsection (5) provides that any licence modifications made under this Part will cease to have effect after the expiry date set by subsections (1) and (2). Under subsection (6), however, any actions (including the imposition of penalties or other enforcement actions) that have previously been taken by Ofgem, or any other party, would not be affected.
115. Subsection (7) allows the Secretary of State to modify a regulatory instrument (which includes a licence) as a consequence of the powers to make licence modifications expiring. Subsection (8) provides that the Secretary of State must consult the holder of any generation licence, Ofgem and any other such persons considered appropriate before making any such modification.

Time limit for the imposition of financial penalties by the Gas and Electricity Markets Authority

Summary and Background

116. Ofgem has powers under the Gas Act 1986 and the Electricity Act 1989 to grant licences for gas and electricity distribution and supply, and to set the conditions of those licences. Ofgem also has the power (s30A-30C of the Gas Act 1986 and s27A-27C of the Electricity Act 1989) to impose financial penalties for the breach of licence conditions. Any such financial penalty cannot be more than 10% of a licence holder's applicable turnover (in its business year preceding the issue of the penalty notice) and the penalty must be imposed within twelve months of the breach of the relevant licence condition occurring.
117. There are a number of circumstances where the twelve month time period can restrict Ofgem's use of its enforcement powers. For example, if a potential breach relates to a requirement to notify consumers of a price change, a consumer will not be aware of the change until they receive their bill. The consumer is then likely to take the issue up with their supplier before approaching Ofgem or the relevant consumer body (Consumer Focus). It may, therefore, take time to identify a pattern of consumer complaints. This lengthy process can mean that although Ofgem have been able to investigate and establish a breach of a licence condition, they may be unable to impose a financial penalty that reflects the full extent of any licence breach.
118. This section extends the time limit within which a financial penalty can be imposed to five years from the breach of the licence condition. The aim is to allow Ofgem to protect the consumer interest by ensuring there is sufficient time for them to make effective use of their existing powers.

Commentary on Sections

Section 24: Time limit for the imposition of financial penalties

119. Subsections (1) and (2) amend section 30C(1) of the Gas Act 1986 and section 27C(1) of the Electricity Act 1989, respectively. In both cases, the time limit for Ofgem to impose a penalty for contravention of a licence condition/requirement or failure to achieve a performance standard is increased from twelve months to five years. Subsection (3) ensures that these amendments do not apply to breaches of licence conditions occurring before this section comes into force.

Notice of unilateral changes to domestic supply contracts

Summary and Background

120. Responses to Ofgem's 2008 probe⁷ into the energy supply markets highlighted a number of problems arising from the length of time given to notify price increases:
- consumers are denied the opportunity to budget for the extra costs or to decide to decrease their usage in light of the increased costs;
 - if a consumer is already in debt to a supplier, switching to an alternative provider to avoid the increase is unlikely to be an option – delayed notification of the price increase is therefore even more detrimental as they have no choice but to accept the change; and
 - a delay in notification of a price increase or change in tariff structure denies the consumer the opportunity to take and provide meter readings around the date when

⁷ "Energy Supply Probe – Initial Findings Report", Ofgem 140/08, 6 October 2008

the rise becomes effective and thus satisfy themselves that any change has been correctly applied by the supplier.

121. Ofgem published an open letter⁸ in 2009 soliciting views on this issue. Subsequently their consultation on proposed retail market remedies⁹ made it clear that best practice is for energy suppliers to inform their customers about price rises as soon as possible and preferably in advance, and that 65 working days should be regarded as a backstop.
122. Ofgem is currently considering whether to change this notification period through its powers under section 11A of the Electricity Act 1989 and section 23 of the Gas Act 1986 to propose modifications to the standard conditions of electricity and gas licences.
123. This section introduces a power to allow the Secretary of State to address the situation should Ofgem not be able to take action within an appropriate timeframe. This power will expire three years after coming into force which is considered sufficiently long to permit the issue to be addressed.

Commentary on Sections

Section 25: Modifications of supply licences: notice of unilateral changes to domestic supply contracts

124. This section provides that the Secretary of State may modify the conditions of supply licences issued under the Gas Act 1986 or the Electricity Act 1989 (subsection (1)). Subsection (2) requires that such modifications may only be made for the purpose of ensuring that domestic consumers are notified within a period determined by the modifications about unilateral changes, by their gas or electricity supplier, of the terms of their contracts or the price charged for their gas or electricity.
125. Subsection (3) will allow modifications to licences to include provisions relating to whether notification of contract or price changes is to be before or after the changes are made, the means of communicating the changes and what happens if a company fails to give the required notice. They may also require the notice to be accompanied by additional information.
126. Subsection (4) provides that this power expires three years after coming into force. Subsection (5) requires the Secretary of State to consult with the holder of any licence being modified, Ofgem and any other persons the Secretary of State considers appropriate. Subsections (6), (7) and (8) contain definitions for the purposes of this section.

Adjustment of energy charges

Summary and Background

127. In 2008, a market probe by Ofgem¹⁰ into the energy supply markets for domestic and small business customers found that, in general, the ‘big six’ suppliers¹¹ were acting competitively. The probe did identify, amongst other concerns, that energy suppliers have consistently earned significantly higher margins for electricity supply than for gas supply in the period 2005-07 and that this difference in margins was not justified by cost differentials. Ofgem noted that in effect this represents a large difference in prices offered to ‘dual fuel’ customers (those who buy electricity and gas from the same supplier) compared to those who source their electricity and gas from separate suppliers, or do not have access to the gas grid.

⁸ “65 day notice period for unilateral contract variations open letter”, Ofgem, 20 February 2009

⁹ “Energy Supply Probe - Proposed Retail Market Remedies”, Ofgem 99/09, 7 August 2009

¹⁰ “Energy Supply Probe – Initial Findings Report”, Ofgem 140/08, 6 October 2008

¹¹ Centrica, EDF, EON, RWE Npower, Scottish Power and Scottish & Southern Energy

128. Ofgem has introduced (with effect from 1 September 2009) a modification to the standard conditions of the gas and electricity supply licences held by suppliers with over 50,000 household customers to deal with these concerns by prohibiting undue discrimination in terms and conditions offered to customers^{12,13,14}. This licence condition will expire on 31 July 2012 – a reflection of Ofgem’s expectation that the full package of measures proposed¹⁵ to deal with concerns raised by the probe will have improved competition in the energy market to the extent that the licence condition is no longer necessary. Ofgem will, however, keep the situation under review.
129. Sections 41A and 41B of the Gas Act 1986 and sections 43A and 43B of the Electricity Act 1989 contain powers (not used to date) to allow the Secretary of State to adjust charges for gas or charges for electricity to help customers who are treated less favourably than others by their supplier. These powers do not currently allow the Secretary of State to intervene in cases where suppliers appear to be cross-subsidising their gas businesses from their electricity businesses and where, consequently, electricity-only customers are being treated less favourably, facing excessive prices not justified by cost differentials. This means that if Ofgem had not taken the action described above, the Secretary of State would have been unable to step in and the situation would not have been addressed.
130. These sections replace the powers in sections 41A and 41B of the Gas Act 1986 and sections 43A and 43B of the Electricity Act 1989. These new powers are derived from the pre-existing powers, but are amended to enable the Secretary of State to deal with situations where energy suppliers treat customers less favourably according to the type of energy supplied.

Commentary on Sections

Section 26: Adjustment of charges to help disadvantaged groups of customers

131. Subsection (1) gives the Secretary of State the power to make a scheme that will adjust charges for gas and/or electricity if the Secretary of State considers one set of customers of a particular energy supplier are treated less favourably than another set of customers. Subsections (3) to (5) provide that these sets of customers can consist of any combination of the following: the electricity customers of that supplier, the gas customers of that supplier, customers that are supplied with both gas and electricity, or any sub-division of these groups. For example, electricity customers could be subdivided into those who have access to the gas network and those who do not.
132. Subsection (6) specifies which energy charges (gas and/or electricity) the Secretary of State may consider. Subsection (7) allows the Secretary of State to make any appropriate calculations or assumptions to establish whether a particular set of customers is being treated less favourably when comparing different charges for the same type of energy, or charges for different types of energy.

Section 27: Schemes: supplementary

133. This section makes provision about energy charge adjustment schemes made under the powers in section 26. Subsection (1)(b) allows for the scheme to adjust the charges of the customers that the Secretary of State considers have been treated more favourably as well as those that have been treated less favourably. Subsections (2) and (3) require the scheme to describe the less favourably treated customers, specify the energy companies whose charges will be adjusted by the scheme and the geographical area to which the

12 “Addressing undue discrimination – decision document”, Ofgem 72/09, 26 June 2009

13 “Notice of modification of the Standard Conditions of the Electricity Supply Licence requiring cost reflectivity between payment methods and prohibiting undue discrimination in domestic supply”, Ofgem 100/09, 7 August 2009

14 “Notice of modification of the Standard Conditions of the Gas Supply Licence requiring cost reflectivity between payment methods and prohibiting undue discrimination in domestic supply”, Ofgem 101/09, 7 August 2009

15 “Energy Supply Probe - Proposed Retail Market Remedies”, Ofgem 99/09, 7 August 2009

scheme applies (unless it covers Great Britain). Subsection (2) also requires the scheme to set out the basis for the adjustment of charges.

134. Subsection (4) enables the scheme to require energy companies to provide information to each other and provides for any necessary modification of licence conditions. This section closely follows subsections (2) to (5) of section 41A of the Gas Act 1986 and section 43A of the Electricity Act 1989.

Section 28: Regulations adjusting energy charges: supplementary

135. Subsection (2) requires the Secretary of State to give notice that it is proposed to make regulations to establish a scheme. Any such notice must be given before the regulations are made, and must set out the effect of the scheme and the reasons for making the scheme. The Secretary of State must give not less than 28 days for representations to be made in relation to the scheme. Subsection (3) provides that a copy of this notice must be given to the company whose energy charges will be covered by the proposed order and provides that the notice must be publicised sufficiently widely so that it will be seen by all those likely to be affected by it.
136. Subsection (4) provides that regulations will remain in force for the period specified in the regulations, and that the maximum period is three years, although further regulations may be made at the end of that period. Subsection (5) allows the Secretary of State to make regulations to require energy companies to provide information to each other for the purpose of enabling the making of regulations to establish a scheme.
137. Subsection (6) provides for Ofgem to monitor the effect of all regulations made under section 26 and report its findings to the Secretary of State. It also enables Ofgem to require energy suppliers to provide any information necessary for this purpose. Subsections (2) to (6) of this section closely follow subsections (1) to (5) of section 41B of the Gas Act 1986 and section 43B of the Electricity Act 1989.

Section 29: Adjustment of energy charges: interpretation

138. Subsection (2) allows regulations made by the Secretary of State to exclude certain sets of customers from being considered in relation to an energy charge adjustment scheme. Subsection (5) provides that the definition of ‘energy supplier’ includes electricity suppliers, gas suppliers, and suppliers of both gas and electricity.