

ENERGY ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Security of Energy Supplies

Chapter 5: Special Administration

Section 93: Amendment of section 166 of the Energy Act 2004

264. This section requires that as soon as practicable after issuing an indemnity in respect of a special administration (whether of an electricity or gas transmission company, a network distribution company, or an energy supply company) the Secretary of State must lay a statement of the agreement before Parliament. It also requires the Secretary of State to report to Parliament where a sum is paid out under such an indemnity.

Special administration under this Chapter

Section 94: Energy supply company administration orders

265. This section provides that a court may make an energy supply company administration order (esc administration order) in relation to an energy supply company. An energy supply company is defined in *subsection (5)* as a company that holds a licence from GEMA to supply gas or electricity.
266. *Subsection (1)* describes an esc administration order as an order made by the court in relation to an energy supply company, which directs that the affairs, business and property of the company are to be managed by a person appointed by the court, while the order is in force.
267. *Subsections (2) and (3)* explain that the person appointed by the court for the purposes of an esc administration order is known as the ‘energy administrator’, who must perform the duties of an energy administrator to achieve the objectives set out in section 95.
268. *Subsection (4)* provides that an energy supply company administration order applies only to those affairs and business of a non-GB company which are carried out in Great Britain and to its property in Great Britain.

Section 95: Objectives of an energy supply company administration

269. This section states the objectives of an energy supply company administration.
270. *Subsection (1)* states the objectives as: ensuring that the supply of gas and electricity to customers is continued at the lowest cost which it is practicable to incur; and making continuation of the energy supply company administration unnecessary by rescuing the company or making a transfer in accordance with subsection (2).
271. *Subsection (2)* stipulates the ways the continuation of energy supply company administration may be made unnecessary. These are either the rescue of the energy supply company as a going concern or transfers which satisfy subsection (3). *Subsection*

(3) states what type of transfers are permissible under the section, and *subsection (4)* provides for how such transfers may take place.

272. *Subsection (5)* provides that rescue is to be preferred to transfer in achieving the objective of energy supply company administration and states that transfers are only to be effected when; rescue is not reasonably practicable without transfers; where the objective of the energy supply company administration cannot be achieved through rescue without transfers; or where such transfers would produce a better result for the creditors or members of the company.

Section 96: Application of certain provisions of the Energy Act 2004 in relation to esc administration orders

273. This section modifies the provisions in sections 156 to 167 of and Schedules 20 and 21 to the Energy Act 2004 (the existing special administration regime for energy licensees), and sections 171 and 196 (interpretation) so they apply in relation to an energy supply company (esc) administration order.

274. The provisions applied include:

- Section 156 of the Energy Act 2004, which provides that an application to the court for an esc administration order can be made only by the Secretary of State or by the Gas and Electricity Markets Authority (GEMA) with the consent of the Secretary of State;
- Section 157 which empowers the court in relation to an application for an esc administration order. The court can make an esc administration order only if it is satisfied that the company is insolvent, facing insolvency or that on a petition from the Secretary of State under section 124A of the [Insolvency Act 1986 \(c.45\)](#) it would be just and equitable (aside from the objective of energy supply company administration) to wind up the company in the public interest;
- Section 158 which stipulates the status of the energy administrator. It provides that the administrator must exercise management functions for the purpose of achieving the objective of the energy supply company administration as quickly and efficiently as is reasonably practicable and must exercise powers and perform duties in the manner which, in so far as it is consistent with the objective of the energy supply company administration, best protects the interests of the creditors of the company as a whole and, subject to those interests, the interests of the members of the company as a whole;
- Section 159 and Schedule 20 which apply the rule making power in section 411 of the [Insolvency Act 1986 \(c.45\)](#). Schedule 20 provides for certain provisions, with modifications, of Schedule B1 to the Insolvency Act 1986 (covering detailed rules relating to administration) to have effect in relation to energy supply company administration. It also grants the Secretary of State the power to make such modifications to primary legislation relating to insolvency (including the provisions of the Act) as the Secretary of State considers appropriate in relation to energy supply company administration;
- Schedule 21 which provides for the transfers to another company or companies as a going concern of so much of the energy supply company's assets as are necessary to ensure that the objective of the energy supply company administration is met. Such transfer schemes are to be made by the energy administrator with the approval of the Secretary of State, after he has consulted GEMA;
- Sections 160 to 164 which prevent energy supply company administration being frustrated by prior orders of various types being granted before the Secretary of State or Gas and Electricity Markets Authority have been given an opportunity to apply for an esc administration order or by other steps being taken when an esc administration order has been made or an application is outstanding;

*These notes refer to the Energy Act 2011 (c.16)
which received Royal Assent on 18 October 2011*

- Section 165 which enables the Secretary of State, with the consent of the Treasury, to give a grant or loan to a company in energy supply company administration in order to achieve the objective of energy supply company administration. It also enables the Secretary of State to set the terms of a grant or loan including the requirement that all or part of a grant should be repaid;
- Section 166 which enables the Secretary of State, with the consent of the Treasury, to indemnify persons in respect of liabilities incurred or loss or damage sustained in connection with the exercise of the energy administrator's powers and duties;
- Section 167 which enables the Secretary of State, with the consent of the Treasury, to provide guarantees in relation to an energy supply company in energy supply company administration and requires the Secretary of State to lay a statement of any guarantees given before Parliament as soon as practicable; and
- Section 171 which provides interpretations of various specific terms and Section 196 which provides interpretations of various general terms.

Section 97: Conduct of administration, transfer schemes etc

275. This section gives the Secretary of State powers to make rules under section 411 of the Insolvency Act 1986 in order to give effect to this Chapter.

Section 98: Modifications of particular or standard conditions

276. This section confers powers on the Secretary of State to modify the conditions of any gas or electricity licence held by a particular person in order to recover any shortfall in meeting the costs of energy supply company administration. The modifications that can be made are specified in section 99.
277. *Subsections (3) to (5)* require the Secretary of State to consult the holder of any licence being modified and anyone else he thinks appropriate before making a modification and to publish modifications made under this section.
278. *Subsection (7)* stipulates the requirement on GEMA to incorporate any modification of standard conditions made by the Secretary of State into new licences it grants and to publish these modifications.
279. *Subsection (8)* limits the exercise of the powers under this section to eighteen months after commencement of this section.
280. *Subsections (9) to (12)* provide that modifications made under this section to standard conditions of (i) electricity generation, distribution and supply licences, (ii) gas transporter, supply and shipping licences, and (iii) gas and electricity interconnector licences, are reflected in the sections of the Utilities Act 2000 and the Energy Act 2004 which govern the standard conditions of those licences.

Section 99: Licence conditions to secure funding of energy supply company administration

281. This section specifies the modifications that the Secretary of State can make to gas and electricity licences to secure funding of energy supply company administration.
282. *Subsections (1) and (2)* state the modifications that may be made under section 98 include requiring the holder of the licence to raise the charges imposed by them so as to raise such amounts as may be determined by the Secretary of State and to pay the amounts raised to specified persons for the purpose of making good a shortfall in the property of an energy supply company available to meet the expenses of energy supply company administration. This will allow the costs of energy supply company administration to be recouped via the licence mechanism from the industry and ultimately from consumers.

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283. *Subsection (3)* defines a 'shortfall' in meeting the expenses of energy administration as the property of the company being insufficient to meet the costs of energy supply company administration. It also defines making payment to make good the shortfall as discharging 'relevant debts' which cannot otherwise be met out of the available property.
284. *Subsection (4)* defines relevant debts and includes obligations to repay the grants, loans, sums paid out under an indemnity and sums paid out under guarantees under sections 165, 166 and 167 of the Energy Act 2004 as applied by section 96 of this Act.

Section 100: Modifications under the Enterprise Act 2002

285. This section provides the power to modify or apply enactments conferred on the Secretary of State by sections 248, 277 and 254 of the Enterprise Act 2002 and includes a power to make consequential modifications to this Chapter of the Act where the Secretary of State considers this appropriate. This power is designed to ensure that the current provisions do not get out of line where the Enterprise Act 2002 provisions are used to modify or apply enactments.

Section 101: Power to make further modifications of insolvency legislation

286. This section gives the Secretary of State the power to make modifications to any provisions under this Chapter. This power is designed to enable the Secretary of State to amend the detail of the regime as experience of its application highlights any difficulties or areas of concern. This is particularly so as the energy market continues to develop rapidly.

Section 102: Interpretation of Chapter 5

287. This section defines the terms used in sections 93 to 101.