

EXPLANATORY MEMORANDUM TO
THE ENERGY ADMINISTRATION (SCOTLAND) RULES

2006 No. 772 (S. 8)

1. This explanatory memorandum has been prepared by the Department of Trade and Industry and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Energy Administration (Scotland) Rules 2006 (“the Rules”) contain the detailed provisions for operating the energy administration regime which is contained in the Energy Act 2004. The Rules relate to companies that the courts in Scotland have jurisdiction to wind up.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1 Sections 154 to 171 of the Energy Act 2004 contain the primary legislation which creates the energy administration regime. There are two sets of rules which provide the details for the operation of that regime; the Energy Administration Rules 2005 (which apply to companies which the courts in England and Wales have jurisdiction to wind up) and the Rules - the Energy Administration (Scotland) Rules 2006. The Energy Administration Rules 2005 came into force on 1st October 2005.
 - 4.2 Section 159(3) of the Energy Act 2004 applies the rule making power of section 411 of the Insolvency Act 1986 for the purposes of giving effect to the energy administration provisions, as it applies for the purposes of giving effect to Parts 1 to 7 of the Insolvency Act 1986.
 - 4.3 The Rules are based very heavily on the Insolvency (Scotland) Rules 1986 which contain the detailed provisions for the formal insolvency procedures of the Insolvency Act 1986 and are well known and understood by insolvency practitioners in Scotland. The provisions of the Rules only differ from the corresponding provisions of the Insolvency (Scotland) Rules 1986 where the circumstances of energy administration dictate a different approach to proceedings.
5. **Extent**
 - 5.1 This instrument applies to Scotland.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 Electricity and gas are generally transported to consumers through transmission and distribution networks. In the case of electricity it is the high voltage transmission network for bulk transfer of power around the country and the lower voltage distribution network for delivery to consumers. In the case of gas it is the transmission network that transfers gas at high pressure around the country, and the low pressure LDZ (local distribution zone) networks that transport gas to end users around the country in much the same way as the electricity network.
- 7.2 The transmission and distribution networks within a particular area are generally owned and operated by a single company under licence issued by the energy regulator, Ofgem. The exception to this is the electricity transmission network in Scotland which is owned by the two Scottish transmission companies (Scottish Power and Scottish and Southern Energy) and operated by National Grid. In the case of gas, National Grid (formerly National Grid Transco) owns and operates the high pressure transmission systems, however, the low pressure systems are operated and owned by National Grid and 4 other companies, each having a licence to operate a monopoly in a separate area.
- 7.3 Currently, due to the nature of the transmission and distribution networks for electricity and gas, each distribution company has a monopoly within its area, and the transmission system operator (National Grid) has the monopoly on running the transmission systems for electricity and gas within Great Britain. These companies are defined as 'protected energy companies' in section 154(5) of the Energy Act 2004.
- 7.4 Should one of these protected energy companies become insolvent and go into the standard administration process, the primary focus would be on obtaining the best recovery possible for the creditors of the protected energy company. This could involve shutting down part or all of the company's network or selling off some of the network assets. This has the potential to result in consumers being left without these vital energy services. Consequently in the Energy Act 2004 the Government introduced an energy administration regime to ensure that these vital customer services would continue in the event of an insolvency of a protected energy company. The objective of an energy administration process would be to secure the company's network, together with the functions carried out by the company so that they are maintained, thereby ensuring services to customers are not adversely affected.
- 7.7 The protected energy companies concerned are vital to ensure security of supply to end-users because they have unique assets transporting energy to consumers. The impact of one or more of these companies being unable to fulfil their operations would be detrimental to consumers, both commercial and domestic, and could have significant ramifications for the economy of Great Britain.

8. Impact

- 8.1 A Regulatory Impact Assessment was carried out for the primary legislation which created the energy administration regime (sections 154 to 171 of the Energy Act 2004) and this can be found at pages 84-90 of http://www.dti.gov.uk/energy/leg_and_reg/acts/energy_act_ria.pdf. A Regulatory Impact Assessment has not been prepared for this instrument as it has no further impact on business, charities or voluntary bodies

9. Contact

- 9.1 Renata Williams at the Department of Trade and Industry Tel: 020 72150442 or e-mail: Renata.Williams@dti.gsi.gov.uk can answer any queries regarding the instrument.