

Draft Order laid before Parliament under section 27A(9) of the Electricity Act 1989 and section 30A(9) of the Gas Act 1986, for approval by resolution of each House of Parliament

DRAFT STATUTORY INSTRUMENTS

2002 No.

**ELECTRICITY
GAS**

**The Electricity and Gas (Determination
of Turnover for Penalties) Order 2002**

<i>Made</i>	- - - -	2002
<i>Coming into force</i>	- -	2002

Whereas a draft of this Order has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 27A(9) of the Electricity Act 1989(1) and section 30A(9) of the Gas Act 1986(2);

Now, therefore, the Secretary of State, in exercise of the powers conferred on her by sections 27A(8) of the Electricity Act 1989 and 30A(8) of the Gas Act 1986, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Electricity and Gas (Determination of Turnover for Penalties) Order 2002 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“applicable turnover” means the amounts, ascertained in conformity with normal accounting practice in Great Britain, which are—

- (a) derived by the licence holder from the provision of goods and services falling within all the licence holder’s ordinary activities (whether or not such activities are authorised by a licence); and
- (b) computed on an accruals basis so that the amounts referred to in paragraph (a) above relating to the period for which applicable turnover is being determined are taken into account, without regard to the date of invoice or receipt of payment,

(1) 1989 c. 29; section 27A was inserted by section 59 of the Utilities Act 2000 (c. 27).
(2) 1986 c. 44; section 30A was inserted by section 95 of the Utilities Act 2000.

after deduction of trade discounts, value added tax and any other taxes based on such amounts;
“business year” means a period of more than six months in respect of which a licence holder publishes accounts or, if no such accounts have been published for the period, prepares accounts;
“date of the notice” means the date on which the Authority⁽³⁾ gives notice under section 27A(3) of the Electricity Act or section 30A(3) of the Gas Act;
“the Electricity Act” means the Electricity Act 1989; and
“the Gas Act” means the Gas Act 1986.

Determination of turnover for the purposes of section 27A(8) of the Electricity Act and section 30A(8) of the Gas Act

3.—(1) Subject to paragraphs (2) to (4) below, for the purposes of section 27A(8) of the Electricity Act and section 30A(8) of the Gas Act the turnover of the licence holder shall be the applicable turnover for the business year preceding the date of the notice.

(2) Where the business year preceding the date of the notice does not equal 12 months the turnover shall be the amount which bears the same proportion to the applicable turnover during that business year as 12 months does to the period of that business year.

(3) Where there is no preceding business year the turnover shall be the applicable turnover of the licence holder for the period of 12 months ending on the last day of the month preceding the month in which the date of the notice falls.

(4) Where in the application of paragraph (3) above the licence holder has applicable turnover for a period of less than 12 months the turnover shall be the amount which bears the same proportion to the applicable turnover during the period for which he has applicable turnover as 12 months does to that period.

2002

Minister of State for Industry and Energy,
Department of Trade and Industry

(3) The Authority was established under section 1(1) of the Utilities Act 2000.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the determination of the turnover of a licence holder for the purposes of section 27A(8) of the Electricity Act 1989 (“the Electricity Act”) and section 30A(8) of the Gas Act 1986 (“the Gas Act”) (article 3).

Section 27A of the Electricity Act and section 30A of the Gas Act provide that where the Gas and Electricity Markets Authority (“the Authority”) is satisfied that a licence holder has contravened or is contravening any licence condition or certain requirements imposed on him by the Electricity Act or the Gas Act or is failing or has failed to achieve any standard of performance prescribed under section 39 or 39A of the Electricity Act or section 33A or section 33AA of the Gas Act the Authority may impose on the licence holder a penalty of such amount as is reasonable in all the circumstances of the case not exceeding 10 per cent of the turnover of the licence holder.

A regulatory impact assessment is available and can be obtained from the Energy Policy Directorate, Department of Trade and Industry, 1 Victoria Street, London SW1H 0ET. Copies have been placed in the libraries of both Houses of Parliament.