

UTILITIES ACT 2000

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part IV: Amendment of the Electricity Act 1989

Sections 28 – 43: Electricity licensing; and sections 74 – 75, 81 – 83 and 85 – 88: Gas licensing

48. *Section 28: Prohibition on unlicensed distribution of electricity.* Section 4 of the 1989 Act provides that it is an offence to generate, transmit or supply electricity unless authorised by virtue of a licence or exemption under the Act. Since unauthorised distribution of electricity is not at present an offence, an electricity distributor whose activities do not extend to supply, transmission or generation does not require a licence or exemption. Distribution is not defined in the 1989 Act and it is currently regulated only through conditions in the licences of electricity suppliers (especially the public electricity suppliers who operate the distribution systems serving the great majority of customers).
49. This section amends section 4 of the 1989 Act. The amended section makes unauthorised electricity distribution a prohibited activity and defines that activity. As a result, the unauthorised distribution of electricity becomes an offence in the same way as the other activities referred to above. Distribution will be authorised by means of either a licence granted by the Authority or an exemption order made by the Secretary of State (see sections 29 and 30). Additionally, this section revises the definition of “supply” in order to reflect the creation of the prohibition on unauthorised distribution.
50. *Sections 29 (Exemptions from electricity licensing), 75 (Exceptions from section 5 of the 1986 Act) and 86 (Exemptions from gas licensing).* These sections deal with the case in which a person is carrying out one or more of the activities for which a licence would normally be required but where licensing would be unnecessarily onerous. Examples might be the owner of a caravan site who resupplies power to each of the caravans, or a local authority which operates a combined heat and power scheme for a block of flats. The sections provide powers for the exemption of such persons. Exemptions may only be granted by the Secretary of State, and may be granted either to a class of persons or to an individual person. In order to protect the interests of consumers and to allow the Authority to perform its duties, the Secretary of State may attach conditions to any exemption, and may revoke or withdraw the exemption if, for example, such a condition is breached. The effect of revocation or withdrawal is that, unless a licence is obtained, the continuation of the activity previously authorised by the exemption becomes an offence. These sections are similar to section 6A of the 1986 Act and section 5 of the 1989 Act, although the new provisions clarify the ability of the Secretary of State to attach conditions to exemptions and align the gas and electricity provisions.
51. Section 5(2) of the 1986 Act (which gives effect to Schedule 2A of that Act), provides a system by which certain activities are excepted from the licensing requirement. Section 75 repeals these sections to avoid having two methods of achieving the same result. It is the Government’s intention, however, to make exemption orders under the

new section 86 powers which will replicate the exceptions currently provided for by Schedule 2A.

52. *Section 30: Licences authorising supply etc. of electricity.* This section replaces section 6 of the 1989 Act with three new sections, sections 6, 6A and 6B. Under new section 6, the Authority will have the sole power to grant electricity licences. The Secretary of State's existing power to grant electricity licences will cease, bringing electricity into line with gas in this respect. The amended section also introduces several significant provisions relating to the separation of supply and distribution, namely:
- a power to grant a licence authorising electricity distribution (section 6(1)(c));
 - the creation of a single category of electricity supply licence and, hence, the removal of the concept of public electricity suppliers (sections 6(1)(d) and 6(3)) ; and
 - a statutory prohibition on the same legal person holding both an electricity supply licence and an electricity distribution licence (section 6(2)).
53. The new section 6A lays down the procedures to be applied in respect of the grant, extension or restriction of electricity licences and provides a power for the Authority to make regulations governing these procedures. (This power has hitherto rested with the Secretary of State.) The introduction of these provisions, and amendments to be made to the 1986 Act brings the 1986 and 1989 Acts closely into line in this respect. The new section 6B sets out additional procedures which apply in the case of electricity transmission licences, where the concept of a geographically exclusive "authorised area" is retained.
54. *Section 31: Enactments referring to public electricity suppliers.* The new section 6 of the 1989 Act separates the activity of electricity supply and distribution and ends the concept of "public electricity supplier" (see paragraph 52 above). References in existing enactments to the relevant terms need to be changed to reflect the new licensing structure. This section sets out the changes that are required. It provides that:
- references to public electricity suppliers are, after the commencement of this section, and depending on the nature of the activities carried out, to be taken to be references to electricity suppliers or distributors, or both, as defined in the 1989 Act as amended by this Act;
 - references to the supply of electricity are to be taken to be references to the supply or distribution of electricity, or both, according to the nature of the activity referred to; and
 - references to holders of supply licences under section 6(2) of the current Act (ie so-called 'second tier' supply licences, as opposed to the supply licences granted under section 6(1)(c) to the public electricity suppliers) are to be taken to be references to supply licences as provided for by this Act.
55. *Sections 32 and 74: Electricity licence conditions and gas licence conditions.* These sections amend section 7 of the 1989 Act and section 7B of the 1986 Act respectively. The purpose of these amendments is to align the powers in the two Acts as far as practicable in relation to the inclusion of conditions in licences.
56. *Sections 33 and 81: Standard conditions of electricity and gas licences.* Section 33 brings the 1989 Act into line with the 1986 Act (as amended by the Gas Act 1995) by introducing the concept of standard conditions of licences into electricity. This concept is designed to ensure that all licences of a particular type contain the same licence conditions as far as appropriate and to facilitate a procedure whereby licence conditions may be modified collectively (see section 35). Section 33(1), which follows the model established by section 8(2) of the Gas Act 1995, gives the Secretary of State the power to draw up and publish the standard conditions of the licences before a specified date. As is already the case for gas, after that date, the Secretary of State will have no further role

in making licence conditions, although he may veto proposals made by the Authority to modify the standard conditions he has established, either when granting a licence or subsequently.

57. [Section 33\(2\)](#) permits the inclusion of conditions in standard conditions of licences which make provision in respect of the operation of other standard conditions. Under this provision, a standard condition may provide for other standard conditions of the same licence type not to be brought into operation, to be suspended or to be re-activated in circumstances specified in the condition. Identical provision is made for standard conditions of gas licences in section 81(1).
58. The existence of such provisions is intended to permit more flexible licensing arrangements. For example, while all electricity suppliers will, by and large, have licences containing the same standard conditions, not all suppliers will be serving all segments of the electricity supply market. Some may decide to serve only the industrial and commercial segments. In such cases it will not normally be necessary for a licence holder to be subject to the additional standard conditions which regulate supply to the domestic market segment. Under this provision, it will be possible for these conditions to be rendered inoperative in individual licences unless and until a direction is given bringing them into force.
59. [Section 33\(3\)](#) inserts a new section 8A into the 1989 Act which incorporates by reference the standard conditions established under the power in section 33(1) into all licences granted after section 33(3) comes into force. (Part II of Schedule 7 provides for the incorporation of standard conditions into existing electricity licences by means of licensing schemes to be made by the Secretary of State.) It also gives the Authority a power to modify the standard conditions established by the Secretary of State when granting a licence. It sets out the necessary process required for this including, in line with the existing provisions of the 1989 Act, a power for the Secretary of State to veto such modifications.
60. The passage of this Act gives rise to the need to revise some of the standard conditions of gas licences. The simplest way of achieving this is to replace completely the existing sets of standard conditions with new sets, even though many of the existing conditions are to be replicated in these new sets. This is achieved by subsections (2) and (3) of section 81. The provisions of section 8(2) of the Gas Act 1995 which introduced standard conditions of licences into gas for the first time are spent and are therefore repealed as indicated in Schedule 8 of this Act.
61. Drafts of the new standard licence conditions for gas and electricity were published for consultation by OFGEM on behalf of the Secretary of State on 7 February 2000. Further consultation on the basis of a revised set of standard licence conditions is expected to take place in Autumn 2000. Copies of the draft standard conditions, and any subsequent revisions can be accessed on the OFGEM website (www.ofgem.gov.uk).
62. [Sections 34 - 40 and 82 - 83](#): implement revised arrangements for the modification of electricity and gas licence conditions by the Authority and for licence modification references to the Competition Commission.
63. At present, under section 11 of the 1989 Act, electricity licence conditions may be modified on an individual basis and with the consent of the licence holder. Licences may also be modified without the consent of the licence holder following references made to the Competition Commission under the 1989 Act and other Acts. This is discussed more fully below – see the commentary on sections 36, 37, 38 and 40.
64. In gas, the existence of standard conditions of licences provides the basis for an additional means of licence modification, in which the standard conditions of all licences of a given type may be modified in the same way if more than a prescribed percentage of holders of that type of licence support the change. This is sometimes (though not in legislation) referred to as “collective licence modification”. In the

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absence of standard conditions of licences in electricity prior to the coming into force of sections 33-35 of this Act, there is no provision in the 1989 Act for collective licence modification.

65. *Section 34* amends section 11 of the 1989 Act, which deals with the modification of the conditions of individual licences, to reflect the introduction into electricity licensing of standard conditions and to bring arrangements for modifying individual electricity licences into line with the existing arrangements in gas. Section 11(1) is replaced by two new subsections (1) and (1A). The new subsection (1) makes clear that section 11 (as amended) relates only to the modification of conditions of a particular licence. Subsection (1A) provides that the modification of a standard condition of an individual electricity licence shall be so as to meet the circumstances of the case and shall not unduly disadvantage any holder of that type of licence in competing with any other such licence holder. Provision made by section 34(2) ensures that where a standard condition is modified in part, the unmodified part of the condition continues to be considered as a standard condition of the licence. This provision, taken from existing gas legislation, is repeated throughout the licence modification sections of this Act wherever provision exists which would permit the modification of a standard condition of an individual licence.
66. *Section 35* inserts a new section 11A into the 1989 Act which provides for collective modification by the Authority of the standard conditions of all electricity licences of a given type and for the making of any such incidental and consequential modifications as the Authority deems necessary. The new section sets out the procedures to be followed by the Authority in the case of such a modification. The Authority must give notice of its proposals both generally, by publishing a notice in such manner as it considers appropriate to bring the notice to the attention of those likely to be affected by the modification, and specifically to the Council and the Secretary of State. The Secretary of State may veto the proposed modification. There must be an opportunity for representations or objections to be made by any interested party, which includes but is not limited to “relevant licence holders” (see below).
67. The proposed modifications may not be made if the proportion of “relevant licence holders” who register an objection to the proposal exceeds either of two blocking minority thresholds. These thresholds relate to: (i) the proportion of “relevant licence holders” who object (expressed as a percentage of all “relevant licence holders”); and (ii) the same proportion, weighted by the market share of the objectors. Different thresholds may be prescribed for cases (i) and (ii). “Relevant licence holders” are defined as, in the case of a modification which creates new conditions, all holders of the given licence type and, in the case of modification or omission of existing conditions, any licence holder in whose licence the relevant conditions are operative. “Operative” here means that a condition has not been rendered inoperative by the making of a direction under a licence condition included in the licence by virtue of the power in section 33(2).
68. The section provides that the Secretary of State may determine by order (subject to affirmative resolution procedures) the values of the blocking minority thresholds for each test for each licence type, and the means by which licence holders' market share is to be determined for the purposes of the second test.
69. *Section 82* (save for subsection (1)) amends section 23 of the 1986 Act so that the provisions for collective modification of gas licences mirror those described in the preceding paragraphs for electricity. Subsection (1) amends section 8(7) of that Act to align it with section 8A(6) of the 1989 Act as introduced by section 33(3) of this Act.
70. *Sections 36, 37, 38 and 40* amend sections 12, 13, 14 and 15 of the 1989 Act respectively. Sections 12 to 14 of that Act relate to licence modification references to the Competition Commission by the Director, reports on such references by the Competition Commission and modifications of licences which may result. Section 15 provides for licences to be modified by the Secretary of State following adverse

public interest findings by the Commission made following references made to it under other Acts of Parliament. The amendments made by section 36 to section 12 allow the Authority to make licence modification references to the Competition Committee either in the case of individual licences or in respect of collective licence modifications such as are provided for by the new section 11A of the 1989 Act. The changes made by sections 36 and 37 to sections 13 and 14 are largely consequent on this. The changes made by section 40 to section 15 allow the Secretary of State, following a reference report by the Commission made under another Act, either to modify the conditions of individual licences or to modify collectively the standard conditions of all licences of a given type. The resulting provisions of the 1989 Act mirror very closely the corresponding provisions of section 24 to 27 of the 1986 Act as amended by this Act. These sections also include changes which are a consequence of the separation of supply and distribution and of the establishment of the Council.

71. *Sections 39 (Competition Commission's power to veto modifications following report) and 83 (Modification of licence conditions following Competition Commission report).* These sections enable the Competition Commission to review the Authority's proposals to modify electricity licences and gas licences (respectively) following the Commission's report on a reference. If it appears to the Commission that the proposed modifications are not requisite for the purpose of remedying or preventing the adverse effects specified in its report, the Commission is required to substitute its own licence modifications which are requisite for that purpose. These sections set out procedures for the notification by the Commission of its intention to substitute its own modifications and for consultation on the modifications themselves.
72. *Section 41 (Transfer of electricity licences) and 85 (Transfer of gas licences).* Currently, section 8AA of the 1986 Act permits a licence to be assigned, with the consent of the Director General of Gas Supply, to another party. In deciding whether to consent to assignment of a licence, the Director has to take into account the same considerations as he would take into account if he were granting a new licence to the assignee. There is no corresponding provision in the 1989 Act.
73. These sections provide for a similar procedure (now described as "transfer" rather than "assignment") to be adopted for both gas and electricity licences. In addition, the opportunity has been taken to amend the procedures set out in section 8AA of the 1986 Act, both to remove procedural hurdles (such as the requirement that the licence must contain a condition authorising assignment) and to ensure that there is proper consultation in appropriate cases before the Authority consents to a transfer. The purpose is to simplify procedures in cases of restructuring within the industry without removing any necessary consumer protection.
74. *Sections 42 and 87: Reasons for decisions under the 1986 Act and the 1989 Act.* These sections require the Authority and the Secretary of State to give reasons for certain of the key decisions that they take. The sections specify the decisions to which this requirement applies. In these cases, the Authority (or Secretary of State as the case may be) is required to produce a notice giving the reasons for its decision and to publish it in a manner which will bring it to the attention of those likely to be interested. A copy must also be sent to the licence-holder to whose licence, or to whom, the decision relates.
75. *Sections 43 and 88: Altering activities requiring licence or exemption in electricity and gas.* Under the current gas and electricity regimes, neither the Secretary of State nor the regulator has the ability to add to the list of activities prohibited without a licence or exemption, or to remove activities from regulatory control. The only means currently available to achieve this is primary legislation. The purpose of these sections is to introduce more flexibility into the regulatory system to adapt to developments in the structure of the electricity and gas markets. Section 43 covers the case of electricity and section 88 covers gas, the provisions being identical in substance.
76. The effect of the sections will be to give the Secretary of State an order-making power to create new licensable activities for gas and electricity, with certain restrictions, or

to remove the need for a licence or exemption. Any order would be subject to the affirmative resolution procedure.

77. The key restrictions on the ability to create new licensable activities are :
- the Secretary of State may only exercise the power at the instigation of the Authority;
 - activities may only become licensable if they are activities connected with those already within the scope of existing licences or exemptions;
 - before the power can be exercised, notice must be given to those carrying on, or intending to carry on the activities in question, and to the Gas and Electricity Consumer Council; and
 - if a reference to the Competition Commission is made as a result of an objection (from a person carrying on or intending to carry on the activities) or for any other reason, the Commission must have clearly concluded that the absence of a licensing requirement for those particular activities operates against the public interest.
78. In the case of a proposal to de-regulate an activity, either the Secretary of State or the Authority may initiate the process. All those likely to be affected, the Council (and in the case of gas, the Health and Safety Executive) must be consulted before any decision to proceed with an Order.

Sections 44 - 50: Duties of electricity distributors

79. *Section 44: Duty to connect on request.* This section replaces the existing sections 16 and 17 of the 1989 Act with three new sections. The new section 16 places on electricity distributors a duty to connect. This duty takes the form of an obligation on a distributor to offer terms for the making and maintenance of a connection between his system and premises when required to do so either by the owner or occupier of the premises or by an authorised electricity supplier acting with the owner or occupier's consent. Electricity distributors are also required to offer terms for a connection to another distribution system run by an authorised distributor at the latter's request. The duty includes an obligation to offer terms for the making and maintenance of a connection to generation equipment.
80. The new section 16A establishes the procedural arrangements relating to the duty to connect. These include notification by the distributor to the party wishing to be connected of, among other things, any information he requires in order to be able to offer terms for the connection, his charges and any security he may require in relation to payment. Powers in relation to the setting of charges and the requiring of security are dealt with in sections 46 and 47.
81. The new section 17 establishes the circumstances in which the duty to connect does not arise. This is where:
- the making of a connection is prevented for reasons beyond the distributor's control;
 - the making of a connection would or might breach electricity safety regulations (and the distributor has done all he can reasonably do to ensure that this would not be the case);
 - it would be unreasonable to expect the distributor to make a connection;
 - to do so would require the powers set out in Schedules 3 and 4 of the 1989 Act and the electricity distributor has not been given those powers in his licence.
82. *Section 45: Abolition of tariffs.* This section repeals section 18 of the 1989 Act. Section 18 provides for tariff supply by public electricity suppliers and its repeal means that all supply will be on the basis of a contract between a supplier and a customer.

83. *Section 46: Power to recover expenditure.* This section amends section 19 of the 1989 Act, so that public electricity suppliers' powers to recover expenditure for the provision of plant and line, in order to make a connection, now apply to distributors.
84. *Section 47: Power to require security.* This section amends section 20 of the 1989 Act, so that public electricity suppliers' powers to require security for payment in respect of the provision of plant or line to make a connection apply to distributors. The deletions of subsections (2) and (4) are consequential amendments, since both subsections relate to supply rather than to distribution.
85. *Section 48: Additional terms of connection.* This section amends section 21 of the 1989 Act so that it relates to the provision of a connection by a distributor rather than, as before, to supply by a public electricity supplier. It provides that the distributor may, when offering terms for the making and maintaining of a connection under section 16A, require the person requiring the connection to accept:
- any restrictions made necessary by the Electricity Supply Regulations made under section 29 of the Act;
 - any terms which it is reasonable in all the circumstances for that person to be required to accept; and
 - any terms relating to economic loss arising from negligence which it is reasonable in all the circumstances for that person to be required to accept.

The second of these provisions is likely to be of particular relevance in the case of large and complex connections where the coverage of the terms offered by the distributor is likely, of necessity, to go substantially wider than the matters dealt with explicitly in section 16A.

86. *Section 49: Special agreements with respect to connection.* This section replaces the existing section 22 of the 1989 Act. It provides that a distributor and a person requiring a connection may enter into a “special connection agreement” under terms agreed between them which might not include those terms which are stipulated for inclusion in any agreement under section 16A of the 1989 Act (as inserted by section 44 of this Act).
87. *Section 50: General duties of electricity distributors.* This section sets down the general duties of licensed electricity distributors in respect of the development of their systems and the use of them to facilitate competition in supply and generation (including embedded generation). These duties are the same as those which already apply to holders of electricity transmission licences. The existing reference to the general duties of public electricity suppliers is repealed.

Sections 51 – 53, 84 and Schedules 4 and 5: Electricity licence holders (and ‘The gas code’)

88. *Section 51: The electricity code.* This section paves the way for Schedule 4.
89. *Schedule 4: Schedule to be substituted for Schedule 6 to the 1989 Act.* The schedule replaces Schedule 6 of the Electricity Act (‘The Public Electricity Supply Code’) with a revised schedule (‘The Electricity Code’). Schedule 6 deals largely with rights of entry to premises and powers of disconnection. It applies to public electricity suppliers only.
90. The revisions are mainly consequential and are needed because:
- the Act ends the concept of a public electricity supplier and separates the activities of supply and distribution; and
 - the various rights and obligations contained in the old schedule do not apply uniformly to supply and distribution and must be distributed between the two separate activities.

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91. In general, the changes provide that distributors have rights of entry in relation to electric line and plant, because plant and line is part of distribution. Suppliers are to have rights of entry in relation to non-payment of supply charges and to meters and metering, because metering is an adjunct of the activity of supply and not distribution.
92. There are four changes which are not just consequential:
- a supplier may install a pre-payment meter as an alternative to disconnection where a customer has not paid his supply charges;
 - a supplier may only disconnect premises for non-payment of supply charges owed for supply to those premises;
 - a distributor may not disconnect premises for non-payment of the costs of connecting the premises to his distribution system; and
 - there are provisions for deemed contracts between customers and suppliers, which will apply where a contract has not been expressly agreed, and for distributors to recover the value of electricity illegally taken from a distribution system.
93. *Section 52: Amendment of Schedule 7 to the 1989 Act.* This section brings into effect Schedule 5, which amends Schedule 7 of the 1989 Act on the use of electricity meters.
94. *Schedule 5: Electricity metering. Paragraph 2* makes a technical change to Schedule 7 of the 1989 Act to reflect the new definition of authorised supplier inserted into the 1989 Act (see paragraph 38(2) of Schedule 6 of this Act). Paragraph 2(2) deletes the current interpretation of “electricity supplier” previously contained in paragraph 13 of Schedule 7. Any reference to the term “electricity supplier” now means a licensed electricity supplier whereas “authorised supplier” means someone authorised either by licence or exemption. The changes do not affect the coverage of Schedule 7.
95. *Paragraph 3(2)* allows the Authority to make regulations allowing for exceptions to the general rule that where electricity is charged for by reference to quantity supplied, such supply must be given through an appropriate meter. This is intended to cover “virtual meters” which are used for calculating electricity charges for appliances such as street lights. Paragraph 4 provides that any such regulations may also provide that in such cases, no offence is committed under paragraph 3 of Schedule 7.
96. A supplier is generally responsible for providing a meter and related services such as maintenance of the meter. However, the customer may choose to procure one from someone other than the supplier (with the latter’s permission). Paragraphs 3(3) and 7 of Schedule 5 distinguish more clearly between these two circumstances than the existing wording in paragraphs 1 and 10 of Schedule 7.
97. *Paragraphs 3(4) and 3(5)* are intended to apportion metering responsibilities appropriately, given the ending of the concept of “public electricity supplier”. Paragraphs 5 and 6 do the same, in relation to those who may be authorised to test meters and take on the responsibilities which that entails. In future, the Authority may authorise anyone whom it sees fit, including, if it wishes, companies which used to be part of a public electricity supplier.
98. The 1989 Act contains a prohibition on the use of a pre-payment meter for the recovery of charges other than those owing for the supply of electricity, the provision of a meter, or the provision of plant and line. Provision of plant and line will in future be a matter for distributors and not suppliers. Paragraph 8 provides that pre-payment meters may only be used to recover charges in respect of the supply of electricity to the premises where the meter is installed, and the provision of the meter (and not the provision of plant or line).
99. *Section 84: The gas code.* Subsection (2) introduces into gas a prohibition on the use of pre-payment meters for recovery of non-supply charges, similar to that in electricity.

100. Subsection (3)(b) and (c) allow a supplier to fit a pre-payment meter as an alternative to disconnection for non-payment of charges but remove the right to demand a deposit (or fit a pre-payment meter if a deposit is not provided). The intention is to have similar regimes in electricity and gas. (See paragraph 2(1)(a) of the new Schedule 6 to be inserted into the 1989 Act by Schedule 4 to this Act). One difference between electricity and gas is that after the fitting of a gas pre-payment meter, it is necessary to purge and test appliances before they can be used. Subsection (4) extends licensees' rights to enter premises under warrant to cover these operations.
101. *Section 53: Powers of licence holders.* Section 10 of the 1989 Act gives effect to Schedules 3 and 4. These schedules confer substantial powers which impact on the rights of third parties: the compulsory purchase of land; street works; protection from electrical interference; the acquisition of wayleaves; the felling and lopping of trees; and the entry upon land for the purposes of exploration. The new section amends section 10 to reflect the creation of the licensable activity of distribution and to remove references to public electricity suppliers. Subsection (2) of this section allows for these powers to be made available to electricity distributors to the extent specified in their licences. Subsections (3) and (5) are consequent upon the changes made to section 6 of the 1989 Act by section 30.
102. Subsection (4) inserts a new subsection (3A) into section 10 of the 1989 Act in order to allow the powers in Schedule 4 of that Act (principally relating to streetworks) to be available to licence holders wishing to develop cooling systems based on combined heat and power generation.

Sections 54 – 58 and 89 – 94: Electricity and gas performance standards

103. The existing performance standards provisions in gas differ in scope from those in electricity. The ability to set performance standards for the gas sector is also time-limited by a “sunset provision” in section 10 of the Gas Act 1995. The main purpose of these sections is to provide the Authority with powers which are not time limited, and which are the same for gas and electricity, to set standards of performance which companies should meet in dealing with consumers.
104. The scope of the existing powers is being extended to include all licensed (but not exempt) suppliers of electricity (currently only public electricity suppliers - “PES’s” - are covered); licensed distributors of electricity (PES distribution arms are covered by the current legislation); and licensed gas transporters. The provisions cover all companies which may come into direct contact with consumers, and do not distinguish between ex-PES suppliers and distributors and others. Some distribution activities, such as restoring supply after a fault, are currently subject to performance standards. The Authority will continue to be able to set such standards. In gas, similar functions are carried out by transporters, and so the powers will be extended to cover them.
105. At present, performance standards may only be set with regard to the activities of companies which affect domestic customers in gas (Gas Act 1995 section 33A) and tariff customers in electricity (section 39 of the 1989 Act). The powers are to be aligned so as to cover, in principle, all customers and potential customers in each sector.
106. In gas, the current provisions are due to lapse as a result of the “sunset section” in section 10 of the Gas Act 1995. To date, the gas regulator has not used these powers, relying instead on licence conditions to set broadly similar standards. Equivalent powers have, however been used in electricity, and section 89 provides for the continuation of the powers in the gas sector.
107. These sections set out procedural requirements that apply to the Authority in relation to the exercise of its powers to set performance standards in both the gas and electricity sectors. They require the Authority, prior to setting new performance standards, to conduct appropriate research and to consult on the basis of a notice giving the Authority's reasons for proposing the new standards.

108. One of the Act's broader purposes is to ensure that customers should only need to have contacts with suppliers and should not have to deal with distributors or transporters. Therefore, subsection (4) of the new section 39A of the 1989 Act (inserted by section 54 of the Act) and subsection (5) of the new section 33AA of the 1986 Act (inserted by section 90 of the Act) provide for compensation from distributors or transporters to reach customers via the relevant supplier. Similarly, subsection (2)(b) of section 42A of the 1989 Act (as substituted by section 58) and subsection (2)(b) of section 33D of the 1986 Act (as substituted by section 94) provide for information about the performance of distributors or transporters against the standards to be passed to customers via suppliers.

Sections 59 - 60, and 95 - 96: Enforcement of obligations of electricity and gas licence holders

109. *Sections 59 and 95: Financial penalties.* These sections apply respectively to the electricity and gas sectors. They introduce a power for the Authority to impose financial penalties on companies for past and current contraventions of their licence conditions, of other specified statutory requirements, and of standards of performance (both overall - i.e. aggregate - standards and standards set to apply in individual cases). The power gives the Authority an additional mechanism for ensuring compliance with these conditions, requirements and standards of performance, and for deterring future contraventions. The power does not apply to contraventions committed before the power comes into effect. Receipts from financial penalties will be paid into the Consolidated Fund.
110. The new power will operate alongside the Authority's existing powers to make orders requiring compliance where non-compliance is continuing or likely, but is not to be tied to them. Hence, a financial penalty may be imposed alongside a provisional or final order, or equally, where no enforcement order has been issued (this might be, for example, where a contravention has already taken place but did not come to the Authority's attention at the time). Where enforcement action has been initiated, penalties can only be imposed within specified periods after the making or confirmation of enforcement orders. Otherwise, penalties can only be imposed within a 12 month period after the contravention in question unless notice of intention to impose a penalty or of investigation of the contravention are served within that period.
111. The penalty will be limited to an amount which is reasonable in all the circumstances of the case, but which cannot in any case exceed 10% of the turnover of the licence holder. The relevant definition of turnover will be set out in an order to be made by the Secretary of State by affirmative resolution. The Authority cannot impose a penalty under these provisions where it is satisfied that the most appropriate way of proceeding is under powers in the Competition Act 1998. In addition, the Authority is to be required to consult on and publish its policies with regard to the imposition and amount of a penalty, and then to take account of those policies. The company may apply to the Authority to pay a penalty in instalments.
112. There are procedural requirements to be followed for the imposition of a penalty. These include:
- requirements on the Authority to publicise its intentions, give notices with prescribed information, and receive and consider comments from interested parties;
 - procedures for modifying the penalty in the light of representations; and
 - procedures for notifying the company concerned and interested parties of the final decision on the imposition of a penalty.
113. The company may also make an application to the court to challenge the validity of a penalty order on certain prescribed grounds. The grounds are that procedural requirements have not been followed and that this has substantially prejudiced the

company's interests, or that the imposition of the penalty, including its amount, was not within the Authority's powers. The requirement to pay a penalty is suspended until the case is determined. The court may cancel or reduce the penalty or extend the timescale to pay. It may also require interest to be paid on the penalty, including on a reduced penalty.

114. In the gas sector, the existing power to impose a monetary penalty as part of a final order imposed by the regulator under section 28(7A) of the 1986 Act as amended, which is superseded by the new power, is repealed.
115. *Sections 60 and 96: Licence enforcement.* These sections which apply to electricity and gas respectively, make minor amendments to existing enforcement provisions to give the Authority greater discretion to make enforcement orders in certain situations where they would previously have been precluded from doing so. They also accelerate the enforcement process by reducing the period for making representations in response to a notice of intention to make an order from 28 days to 21 days. This aligns the time periods for making representations in relation to enforcement orders with those which apply in relation to financial penalties. The changes will not apply to orders made before the entry into force of the new provisions.
116. At present, the regulator cannot make or confirm an enforcement order in respect of a contravention where he is satisfied that he is precluded by his general duties from doing so; where the company has agreed to take and is taking steps to remedy the contravention; where the contraventions in question are trivial; or where he is satisfied that the Competition Act 1998 is the most appropriate way of proceeding. The Act changes this prohibition on action into a discretion not to take action in cases where the contravention was trivial or where the company was taking steps to comply. The Authority will not be compelled to make an enforcement order in such circumstances, but would be able to do so if it considered it appropriate.

Section 61 and 97: Remuneration and service standards

117. The intention of these sections, which apply to the electricity and gas sectors respectively, is to achieve transparency as to the relationship between directors' remuneration and customer service standards in markets which are not fully competitive. The sections require utility companies that provide any price-regulated services to disclose whether or not they link the remuneration of the directors of their price-regulated businesses to levels of customer service attained in these businesses, and to give details of how any links affect remuneration.
118. The sections insert new sections, identical in their effect, into the 1986 and 1989 Acts. Subsections (2) - (4) of the new sections require the disclosure described above to be made as soon as reasonably practicable after the end of the disclosing company's financial year, and specify what information must be disclosed. The intention is that the information should enable anyone inspecting it to understand the relationship between the level of service provided and directors' remuneration, including how the company decided what level of service had been achieved.
119. Subsections (5) and (6) of the new sections require price-regulated companies, when they make their disclosures about the last financial year, to state the links between directors' remuneration and service standards that are in place for the current financial year. If they have no links, but have decided to introduce them in future, they must describe these. If the current or planned links are different from last year's, then the company must explain what differences may be expected to result from the change.
120. Under subsections (7) and (8) of the new sections, licence-holders will have to make their disclosures in a form with which the Authority is content, and publish them. The Authority can also publish them, though the intention is that it would not do so unless it felt that the publication by the company was in some way unsatisfactory (for example, because it was not accessible enough).

121. Subsection (10) of the new sections defines certain terms used. Definitions include:
- “activities subject to price regulation”: the intention is to cover price regulation which constrains companies’ freedom to raise prices, of the sort imposed because a company is not exposed to full competition. Price controls such as RPI - X (whether on a single service or basket of services) are thus included, as are specified maximum prices. On the other hand, other sorts of price regulation, for example an obligation to charge the same price throughout a geographic area, are not covered by the definition;
 - “remuneration”: this includes all the remuneration received by a director from the price-regulated company including pension benefit;
 - “service standards”: the sections apply to any standards of customer service imposed by the Authority or the Secretary of State, as well as any which the company may have set itself.

The Authority is to enforce the disclosure requirement, in the same way as if it were a licence condition.

Sections 62 - 67: Electricity from renewable sources

122. These sections replace the Secretary of State’s powers to impose obligations designed to promote the generation of electricity from non-fossil sources with a power for the Secretary of State to impose obligations in relation to renewables generation only (i.e. excluding nuclear and fossil generation) on all licensed electricity suppliers. An obligation will be based on the requirement that a proportion of total supply of electricity to consumers must be renewable electricity.
123. *Section 63: Orders under section 32: supplementary.* This section (together with section 62) provides flexibility in imposing an obligation in relation to its duration and size, including the possibility that it can increase or decrease over time, that a proportion of an individual supplier’s obligation may be carried forward or back into another period, the types of generation that may be used in its fulfilment, and the provision of information necessary to set and determine the fulfilment of suppliers’ individual obligations.
124. *Section 64: Green certificates.* This section introduces the concept of ‘green certificates’, which will be tradable certificates of the production and supply of renewable electricity issued by the Authority, the possession of which will count towards a supplier’s obligation.
125. *Section 65: Alternative ways of discharging renewables obligation: payments.* This section provides an alternative way of meeting an obligation by making a payment to the Authority. The Authority must pay the amounts received to electricity suppliers in line with a system of allocation specified by the Secretary of State.
126. *Section 67: Supplementary.* This section provides powers for the Secretary of State to make orders for the purpose of ensuring the continuation of outstanding contracts entered into by the public electricity suppliers with renewables generators in compliance with non-fossil fuel orders (in Scotland, Scottish renewables orders) made under section 32 of the 1989 Act. In particular it will enable provision to be made for the continuation of the fossil fuel levy with respect to the outstanding contracts and for the transfer of the contracts themselves from the public electricity suppliers to nominated successors.

Sections 68 – 73 (electricity), Sections 98 - 99 and 102 (gas) and Section 103 (overall energy efficiency targets): Miscellaneous

127. *Section 68: Modification of licences: electricity trading arrangements.* This section provides a power for the Secretary of State to modify electricity licences and the

standard conditions of electricity licences for the purpose of implementing the new electricity trading arrangements. (These are set out in 'The New Electricity Trading Arrangements – OFGEM/DTI Conclusions Document' published in October 1999. The document can be accessed on the OFGEM website – <http://www.ofgem.gov.uk/elarch/netadocs.htm>.) The power will be exercisable at any time within a period of two years from the passing of the Act.

128. *Sections 69 and 98: Assistance for disadvantaged groups of electricity and gas customers.* These sections which apply to electricity and gas respectively insert new sections into the 1986 and 1989 Acts permitting the Secretary of State, by order, to make schemes which have the effect of providing a cross-subsidy in favour of disadvantaged customers in relation to the charges they pay for their electricity or gas. This is intended to be a reserve power. The sections provide for consultation on any proposal to make an order; for the information necessary for the running of any schemes to be passed between the various parties; and for the Authority to have a role in monitoring and reporting on the operation of the schemes and enforcement of breaches of them.
129. *Sections 70 and 99: Energy efficiency requirements for electricity distributors and suppliers and for gas transporters and suppliers.* These sections replace the existing provisions of the 1986 and 1989 Acts which allow the relevant Directors-General to impose standards of performance on gas suppliers and public electricity suppliers in connection with the promotion of the efficient use of gas and electricity by consumers. The new sections provide that the Secretary of State, rather than the Authority, may make orders imposing obligations on licensed gas and electricity suppliers, gas transporters and electricity distributors, to meet targets for the promotion of improvements in efficiency in consumers' use of energy. A target will be the achievement of the saving of a specified amount of energy. There is provision to specify the way in which the amount of energy that will be saved by a given activity will be calculated. It will be for the licensee concerned to choose the activities (for example installations of home insulation or promoting the use of energy efficient appliances) it will undertake to meet the required energy saving. The Authority is to be responsible for the calculation and enforcement of the requirement, using its normal enforcement powers, including monetary penalties.
130. *Section 103: Overall energy efficiency targets.* This section allows the Secretary of State to set an overall energy efficiency target which covers both gas and electricity, which would be apportioned between the separate obligations under section 70 (energy efficiency requirements for electricity) and section 99 (energy efficiency requirements for gas).
131. *Section 71: General duties of transmission licence holders in Scotland.* Section 9(2) (b) of the 1989 Act imposes on any holder of a transmission licence a duty to facilitate competition in the supply and generation of electricity. Subsections (3) and (4), however, qualify this duty in the case of persons in Scotland who hold both a transmission licence and a licence to supply or to generate electricity. In the case of any such person, the duty is to make the transmission system available to competitors on terms which neither prevent nor restrict competition.
132. As competition in the Scottish market has developed it is thought that there is no longer any justification for treating transmission companies in Scotland on a different basis from the transmission company in England and Wales. This section therefore repeals subsections (3) and (4) of section 9.
133. *Section 72: Uniform prices etc: Scotland.* Section 2(2) of the 1989 Act puts the Director under an obligation to ensure that the prices charged to tariff customers in any area of Scotland specified in an order by the Secretary of State do not discriminate (whether directly or indirectly) between different parts of that area (the so-called "Common Tariff Obligation"). The abolition of tariffs effected by this Act means that the desired effect of ensuring that remote Scottish areas do not suffer discrimination can no longer be achieved in this way. Instead, this section provides a power for the Secretary of

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

State to make orders requiring holders of transmission, distribution, and supply licences to charge prices and, in the case of suppliers, to offer contract terms which do not discriminate between customers in different parts of the specified area. The existing Common Tariff obligation is limited to tariff customers: essentially domestic and small business users. It is expected that the orders to be made under this section will be restricted to a broadly similar group of consumers (by virtue of the power in sub-section (4) to make different provisions for different cases).

134. *Sections 73 and 102: Maximum prices for reselling electricity and gas.* The existing provisions in the 1989 Act and the 1986 Act share the overall objective of preventing excessive prices being charged when electricity or gas is resold (e.g. by landlords to tenants), but differ in their details. These sections reconcile the differences so that the powers granted to the Authority are the same for the two fuels (except for the exemption for gas used for propelling motor vehicles).
135. *Section 73* makes the power in the 1989 Act more flexible:
- instead of having to fix actual prices, the Authority will be able to set a formula by which maximum prices are calculated;
 - the Authority may direct that interest be paid on sums charged in excess of the maximum price, and not just the value of the overpayment itself as at present; and
 - the Authority may direct that resellers provide information on their prices to purchasers (and the Authority may direct that the maximum price be reduced by an amount or percentage if the reseller fails to comply with this requirement).

These three changes align electricity with the relevant aspects of the current position in gas.

136. *Section 102* changes the existing duty on the regulator to set maximum resale prices in gas into a power. This will allow the Authority to choose not to set a maximum resale price in relation to certain suppliers which may be useful where, for example, supply is unmetered. It also extends the ambit of the current power to include gas originally supplied by an exempt supplier (at present only gas supplied by a licensed supplier which is subsequently resold is covered). Both of these matters are already covered in the parallel electricity legislation.