

ENERGY ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Energy Efficiency

Chapter 4: Reducing Carbon Emissions and Home-Heating Costs

Summary and Background

147. This Chapter contains new and amended powers to create a future Energy Company Obligation (ECO), which the Government intends will replace, in time, the existing energy company obligations – the Carbon Emissions Reduction Target (CERT) (see the Electricity and Gas (Carbon Emissions Reduction) Order 2008 (S.I. 2008/188, as amended)) and the Community Energy Saving Programme (CESP) (see the Electricity and Gas (Community Energy Saving Programme Order) 2009 (S.I. 2009/1905)) – when they end in December 2012. Broadly, the policy intention is to create a new obligation which draws on the framework underpinning the existing energy company obligations but also reflects a number of new developments as described below.
148. By the time CERT and CESP end in December 2012, the Green Deal financing framework is expected to have been put in place. The availability of Green Deal financing will represent a significant change to the policy landscape and one of the key objectives of the ECO will be to underpin the market-led Green Deal, helping to ensure that, as far as possible, all households can access energy efficiency measures.
149. By the time the new obligation is up and running, the energy efficiency needs of the housing stock in Great Britain will also have changed such that hard-to-treat properties will form a much larger proportion of the pool of homes remaining to be insulated. For example, there will be far fewer lofts and wall cavities remaining to be insulated, and of those remaining, a much larger proportion will be technically less straightforward to treat. This is in addition to the approximately 7 million homes in Great Britain that require some form of internal or external solid wall insulation. Green Deal finance alone is unlikely to meet the needs of installing more expensive improvements in hard to treat homes, and therefore part subsidising the installation costs through the ECO may serve to reduce the size and term of the repayments by the householder and so make these forms of energy efficiency improvements economically viable.
150. The ECO may also focus on support for low-income households and the most vulnerable in society. Some households in this category may require more support than just Green Deal finance if they are to improve their energy efficiency and reduce their fuel bills. Some of the types of measures which may help low-income households or those with individuals who are particularly vulnerable to the cold such as the elderly or disabled, such as boiler repairs or new heating systems, will help to reduce the cost of heating a home but will not necessarily lead to energy efficiency or carbon savings. As a result it is difficult to incentivise such measures through a carbon or energy efficiency-based target using the existing enabling powers. The proposed new ECO powers will allow for an obligation to be set in such a way as to drive delivery of these measures too.

151. Many of the powers needed to establish the new ECO are contained in section 33BC of the Gas Act 1986, section 41A of the Electricity 1989 and section 103 of the Utilities Act 2000. These existing powers enable the Secretary of State not only to set an overall carbon emissions reduction target, but also to require obligated energy companies to meet their individual targets by action taken in relation to specified types of people or specified geographical areas. However, these existing powers need to be amended to ensure that the new ECO will be effective in the evolving policy landscape described above.
152. In summary, Chapter 4 of Part 1 of the Act amends and adds to the existing enabling powers in section 33BC of the Gas Act 1986, section 41A of the Electricity Act 1989 and section 103 of the Utilities Act 2000 which underpin the existing CERT and CESP Orders, so as to enable the Secretary of State to:
- impose a ‘home-heating cost reduction target’ alongside the carbon emissions reduction target (see sections 68 and 69);
 - require a carbon emissions reduction target or home-heating cost reduction target to be met (in whole or in part) by action taken in relation to specified types of individuals living in specified types of property or specified areas;
 - require specified information from energy companies for the purposes of assessing the effectiveness of a new obligation towards meeting its policy objectives (see section 71); and
 - provide that the administration and/or enforcement of the new obligation is to be carried out by either the Authority, a body other than the Authority or the Secretary of State (see for example the amendments made by section 66(3) and 67(3) to the Gas Act 1986 and Electricity Act 1989 respectively).

Section 66: Promotion of reductions in carbon emissions: gas transporters and suppliers

153. This section amends section 33BC of the Gas Act 1986 to include additional powers that will enable the Secretary of State to create a framework describing how the Energy Company Obligation must be achieved.
154. *Subsection (3)* enables the Secretary of State to provide that the administrative and enforcement functions of a new ECO are to be exercised by either GEMA, a body other than GEMA or the Secretary of State. Whilst the default position is for GEMA to be the Administrator for a new ECO, the Secretary of State is given a power by the provision inserted by section 66(3) to provide for another body or the Secretary of State himself to be the Administrator.
155. Subsection (6)(a) inserts new subsections (5)(bb) to (be) and (5)(c) into section 33BC. These new provisions have the effect of allowing a framework to be established within an Order that determines how an energy company may achieve its carbon saving obligation. Specifically, new subsections (5)(bb) and (bc) enable an order to require energy companies to deliver actions only to certain types of property or individual as directed by the Authority. New subsection (bd) allows the Secretary of State to make provision that requires energy companies to consult specified organisations – for example local authorities – as a condition of an action being eligible under the new obligation.
156. New subsection (5)(be) creates a provision designed to protect the integrity of the scheme. Energy companies may be required to meet two targets – a carbon emissions reduction target and a home-heating cost reduction target. The Secretary of State will have the power to prevent companies from counting a specific action against more than one of these two targets and therefore guards against the risk of double-counting.

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

157. The insertion of new subsection (5)(c) enables the Secretary of State to make provision determining how actions should be regarded as contributing towards the target which is set – for example, how the score for a measure or package of measures may be calculated.
158. *Subsection (6)(e)* inserts a new subsection (5)(g) which enables the Secretary of State to make provision requiring the Administrator or an alternative specified body to offer services to the obligated companies which, for example, may help them achieve the new obligation. The provision also enables the Administrator to charge a fee to those who take up the offer.
159. *Subsection (7)* makes further provision in respect of the situation envisaged in new subsection (5)(bc), see paragraph 158. The insertion of a new section (5A) will enable provision to be made authorising the Administrator to require specified persons to provide information to assist it to select individuals, to specify the criteria by which the Administrator should select individuals, to determine, or specify how the Administrator should determine which obligated companies should act in respect of a given individual. New subsection (5A) will also enable provision to be made which enables the Administrator to provide relevant information to an obligated company which will help the energy company to comply with a direction to assist a particular individual. Under new subsection (5A) it will also be able to make provision setting out the circumstances in which a direction may be given and the circumstances in which a direction need not be complied with.
160. Subsection (7) also inserts a new subsection (5B) into section 33BC that allows for the Secretary of State to provide that an action receives a greater score than it would otherwise do where it relates to individuals of a specified description, properties of a specified description, or a combination of those two criteria.
161. *Subsection (9)* inserts new subsections (7A) and (7B) into section 33BC both of which make provision about enforcement in circumstances where someone other than the Authority is appointed to be the Administrator. Powers are provided to enable a person other than the Authority to effectively enforce the new Energy Company Obligation.
162. *Subsection (11)* inserts two new subsections into section 33BC: new subsection (9A) allows the Secretary of State to make provision requiring the Administrator to produce guidance material to obligated companies whilst new subsection (9B) provides that the Secretary of State may issue general or specific directions to the Administrator, and that the Administrator should carry out its functions in accordance with any direction.
163. *Subsection (12)* makes provision reflecting the Scottish devolution settlement in its application to the powers of the Secretary of State under section 33BC of the Gas Act 1986. New subsection (10A) requires the Secretary of State to obtain the consent of Scottish Ministers before making an order which contains provision under section 33BC(2)(b) which will extend to Scotland and which is within the legislative competence of the Scottish Parliament.
164. *Subsection (13)* inserts a new subsection (12A) which in turn makes provision enabling the negative resolution procedure to apply in respect of amendments of a particular type which are made to an earlier order. (Section 64(15) helps to define the operation of new subsection (12A)). Prior to these amendments all orders under section 33BC were subject to the affirmative resolution procedure.
165. *Subsection (14)* inserts a definition of the ‘home-heating cost reduction target’.

Section 67: Promotion of reductions in carbon emissions: electricity generators, distributors and suppliers

166. This section amends section 41A of the Electricity Act 1989 in materially identical terms to the way in which section 66 amends section 33BC of the Gas Act 1986.

167. However, section 67(16) qualifies the power in section 41A so that the Secretary of State cannot impose an obligation on electricity generators which will have effect after 31st December 2012.

Section 68: Promotion of reductions in home-heating costs: gas transporters and suppliers

168. This section inserts new powers into the Gas Act 1986 to allow the Secretary of State to make an order which imposes on gas transporters and gas suppliers an obligation to achieve a 'home-heating cost reduction target'.
169. **Section 68** inserts a new section 33BD into the Gas Act 1986. Subsection (2)(b) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 33BC of the Gas Act 1986 to orders made under the new section 33BD so as to create a similar framework for establishing a separate home-heating cost reduction target.

Section 69: Promotion of reductions in home-heating costs: electricity distributors and suppliers

170. This section inserts new powers into the Electricity Act 1989 to allow the Secretary of State to make an order which imposes on electricity distributors and electricity suppliers an obligation to achieve a 'home-heating cost reduction target'.
171. **Section 69** inserts a new section 41B into the Electricity Act 1989. Subsection (2)(b) of the new section defines the home-heating cost reduction target as a target for the promotion of measures for reducing the cost to individuals of heating their homes. Subsection (4) of the new section applies many of the provisions found in section 41A of the Electricity Act 1989 to orders made under the new section 41B so as to create a similar framework for establishing a separate home-heating cost reduction target.

Section 70: Overall home-heating cost reduction targets

172. This section inserts a new section 103A into the Utilities Act 2000 to confer a new power enabling the Secretary of State to create by order an overall home-heating cost reduction target which must be achieved by obligated energy companies.
173. The new section 103A contains subsections which mirror those in section 103 of the Utilities Act 2000 which deal with the Secretary of State's power to set an overall carbon emissions reduction target. Subsection (2) of the new section allows the Secretary of State to set more than one overall target for a specified period. *Subsection (3)* allows the Secretary of State to make provision requiring the Administrator to apportion the overall target between gas transporters or suppliers and electricity distributors and suppliers according to criteria specified in an order. New subsection (4) requires the Administrator to exercise its functions in a manner which it considers is best calculated to result in the achievement of the overall target.
174. Subsection (5) of the new section 103A requires the Secretary of State to undertake a consultation with those listed along with such other persons as the Secretary of State considers appropriate before making an order under this new section. *Subsection (6)* provides that an order made under this new section is subject to the affirmative resolution procedure.

Section 71: Power of Secretary of State to require information: carbon emissions reduction targets and home-heating cost reduction targets

175. This section inserts a new section 103B into the Utilities Act 2000 to enable the Secretary of State, by notice, to require information from energy companies, the Authority and any body other than the Authority that is for the time being the

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Administrator. The information may be required for any of the purposes listed in subsection (1)(a), (b) and (c) of new section 103B.

176. In summary, the purposes listed in subsection (1) are to enable the Secretary of State to decide whether to make a carbon emissions reduction order or a home heating cost reduction order, to review the operation and effect of any such order made and also for the purpose of establishing or maintaining a record of the properties which have received measures under either type of order.
177. Subsection (2) of new section 103B allows the Secretary of State to, by notice, require gas transporters and gas suppliers, electricity distributors, electricity suppliers, and the Authority to provide specified information or information of a specified kind within specified periods or intervals to the person who establishes and maintains a measures record on behalf of the Secretary of State. Subsection (3) describes those who fall within the scope of the information gathering power in this new section whilst subsection (4) enables the Secretary of State to make provision dealing with the form in which information must be provided and the time in which it must be provided.
178. Subsection (5) provides that under new section 103B in the Utilities Act 2000 a notice under the section will not be able to require a person to provide information which the person could not be compelled to provide in evidence in civil proceedings.
179. Subsection (6) of new section 103B enables the Secretary of State to share any information obtained under the section with Scottish and Welsh Ministers for the purposes of enabling them to review the operation and effect in Scotland and Wales respectively of either the carbon emissions reduction order or the home-heating cost reduction order.
180. Subsections (7) and (8) make provision enabling the power to request information to be enforced as a relevant requirement. These provisions ensure that the definitions of a relevant requirement in the relevant parts of the Gas Act 1986 and the Electricity Act 1989 are construed so as to encompass any requirements imposed by or under section 103B. The effect of these two provisions is to ensure that the Authority, if appointed as Administrator, has the necessary enforcement powers to ensure that requests for information under new section 103B are effectively enforced.

Section 72: Minor and consequential amendments

181. This section refers to Schedule 1, which contains minor and consequential amendments relating to this Chapter.