



# Energy Act 2023

## 2023 CHAPTER 52

### PART 9

#### ENERGY SMART APPLIANCES AND LOAD CONTROL

### CHAPTER 1

#### INTRODUCTORY

#### **238 Energy smart appliances and load control**

- (1) The following definitions apply for the purposes of [this Part](#).
- (2) “Energy smart appliance” means an appliance which is capable of adjusting the immediate or future flow of electricity into or out of itself or another appliance in response to a load control signal; and includes any software or other systems which enable or facilitate the adjustment to be made in response to the signal.
- (3) The functionality described in [subsection \(2\)](#) is referred to as the “energy smart function”.
- (4) “Load control signal” means a digital communication sent via a relevant electronic communications network to an energy smart appliance for the purpose of causing or otherwise facilitating such an adjustment.
- (5) For the purposes of subsection (2) an adjustment to the flow of electricity into or out of an appliance is made in response to a load control signal whether it is made in response to—
  - (a) the sending of the signal, or
  - (b) the sending of the signal and one or more additional factors.
- (6) The sending of a load control signal to an energy smart appliance is referred to as “load control”.

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- (7) Regulations under [section 239](#), excluding regulations under [section 239\(6\)](#), are referred to as “energy smart regulations”.

## CHAPTER 2

### ENERGY SMART APPLIANCES

#### **239 Energy smart regulations**

- (1) The Secretary of State may by regulations make provision about energy smart appliances that are—
- (a) capable of being used in connection with any of the purposes specified in [subsection \(2\)](#), or
  - (b) charge points (for electric vehicles).
- (2) The specified purposes are—
- (a) refrigeration;
  - (b) cleaning tableware;
  - (c) washing or drying textiles;
  - (d) storing energy that—
    - (i) was converted from electricity, and
    - (ii) is stored for the purpose of its future reconversion into electricity;
  - (e) heating;
  - (f) air conditioning or ventilation.
- (3) In making such regulations, the Secretary of State must, in particular, have regard to the desirability of ensuring that—
- (a) the energy smart function or compatibility with that function is incorporated into appliances in a manner that is compliant with the regulations,
  - (b) the energy smart function does not undermine the delivery of a consistent and stable supply of electricity,
  - (c) the energy smart function in any energy smart appliance is capable of operating in response to load control signals from any person carrying out load control, and
  - (d) communications, software, systems and personal and other data used in connection with energy smart appliances are secure or otherwise protected, for purposes including the protection of end-users.
- (4) Such regulations may, in particular—
- (a) make provision about all energy smart appliances or any description of energy smart appliances;
  - (b) impose technical or other requirements in relation to such appliances, including requirements to display or otherwise provide information about appliances;
  - (c) prohibit the placing on the market of, or other activities in connection with, relevant appliances (see [section 240\(3\)](#));
  - (d) make provision about the recall of appliances to prevent, or in response to, non-compliance with the regulations;

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- (e) make provision for the Secretary of State to issue guidance about prohibitions or requirements imposed by or under the regulations;
  - (f) provide for the enforcement of the regulations.
- (5) Such regulations may impose prohibitions or requirements on any person, including any person making, supplying, importing or distributing energy smart appliances or carrying out load control (but see [section 240\(6\)](#)).
- (6) The Secretary of State may by regulations—
- (a) make provision about the meaning that “relevant electronic communications network” is to have for the purposes of [this Part](#);
  - (b) amend the list of purposes in [subsection \(2\)](#).
- (7) In [this Chapter](#), “charge point” has the same meaning as in Part 2 of the Automated and Electric Vehicles Act 2018 (see section 9 of that Act).

#### **240 Prohibitions and requirements: supplemental**

- (1) Requirements imposed by energy smart regulations may, in particular, refer or relate to—
- (a) published documents and standards (as they have effect from time to time);
  - (b) a list, published by the Secretary of State, of such documents and standards;
  - (c) requirements (however described) imposed by or under any enactment or Act of the Scottish Parliament.
- (2) Prohibitions imposed by energy smart regulations may, in particular, relate to—
- (a) the providing of load control for appliances that are not compliant with the regulations;
  - (b) the modification of appliances in a manner that would cause them to cease to be compliant with the regulations.
- (3) The following kinds of appliances are “relevant appliances” for the purposes of [section 239\(4\)\(c\)](#)—
- (a) energy smart appliances that are not compliant with requirements or particular requirements of energy smart regulations;
  - (b) appliances without the energy smart function, or that are not compatible with the energy smart function of another appliance, and are—
    - (i) charge points (for electric vehicles), or
    - (ii) electrical heating appliances.
- (4) The reference in [subsection \(3\)\(b\)\(ii\)](#) to electrical heating appliances includes a reference to heat pumps.
- (5) In [this Chapter](#), “modification of appliances” has the meaning given by energy smart regulations.
- (6) Energy smart regulations may not provide for a prohibition to be contravened by an end-user of an appliance (in their capacity as such) or for such a person to be enforced against as described in [section 241](#) or [242](#).

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## 241 Enforcement

- (1) Provision for the enforcement of energy smart regulations may, in particular, include provision of a kind described in [this section](#), [section 242](#) or [section 243](#).
- (2) Energy smart regulations may include provision to ensure compliance with any prohibition or requirement imposed by or under the regulations, including provision—
  - (a) designating authorities to carry out enforcement (referred to in [this Chapter](#) as “enforcement authorities”);
  - (b) requiring persons to—
    - (i) maintain information;
    - (ii) monitor compliance and report non-compliance;
    - (iii) take specified steps to remedy non-compliance;
  - (c) requiring persons to supply evidence of their compliance to enforcement authorities;
  - (d) conferring powers of entry, including by reasonable force;
  - (e) conferring powers of inspection, search and seizure;
  - (f) conferring powers to require the production of information or things held at, or electronically accessible from, entered premises;
  - (g) conferring powers to enable the testing of energy smart appliances by enforcement authorities, including powers to require the provision of sample appliances and powers to make test purchases;
  - (h) conferring functions, including functions involving the exercise of a discretion.
- (3) Regulations conferring powers described in [subsection \(2\)\(d\)](#), [\(e\)](#) or [\(f\)](#) must provide that persons exercising those powers are to produce evidence of their authority if required to do so.
- (4) The regulations may not allow entry to premises by reasonable force without a warrant issued by a justice of the peace or, in Scotland, a sheriff or summary sheriff.
- (5) Energy smart regulations may allow enforcement authorities to impose requirements by written notice on persons to—
  - (a) produce information or things;
  - (b) make appliances compliant with energy smart regulations;
  - (c) stop or limit—
    - (i) the placing on the market of, or other activities in connection with, appliances,
    - (ii) the providing of load control to appliances, or
    - (iii) the modification of appliances,for the purpose of preventing or mitigating non-compliance with energy smart regulations;
  - (d) recall appliances to prevent, or in response to, non-compliance with energy smart regulations.
- (6) Regulations that allow an enforcement authority to impose requirements may also provide for—
  - (a) the authority to apply to a court or tribunal in connection with a failure to comply with a requirement, and

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- (b) the court or tribunal, if satisfied that such a failure has occurred, to make an order for the purpose of securing compliance with the requirement.
- (7) Such an order may require a person to take, or refrain from taking, steps specified in the order (including at, by or until specified times).
- (8) Energy smart regulations may make provision to enable an enforcement authority to accept an enforcement undertaking from a person where the authority has reasonable grounds to suspect that the person has failed to comply with any prohibition or requirement imposed by or under the regulations.
- (9) An “enforcement undertaking” is an undertaking to take such action to secure compliance with the regulations as may be specified in the undertaking within such period as may be so specified.
- (10) Provision made by virtue of [subsection \(8\)](#) must include provision that unless the person from whom the undertaking was accepted has failed to comply with the undertaking or any part of it—
  - (a) that person may not at any time be convicted of an offence in respect of the act or omission to which the undertaking relates, and
  - (b) the enforcement authority may not impose on that person any penalty which it would otherwise have power to impose under the regulations in respect of that act or omission.
- (11) Provision made by virtue of [subsection \(8\)](#) may include any provision of a kind mentioned in section 50(5) of the Regulatory Enforcement and Sanctions Act 2008.
- (12) The Secretary of State may make payments or provide other resources to, or in respect of, enforcement authorities in connection with the exercise of functions under energy smart regulations.
- (13) Energy smart regulations may provide for an enforcement authority to issue guidance about the enforcement of the regulations and the exercise by the authority of its functions under the regulations.

## **242 Sanctions, offences and recovery of costs**

- (1) Energy smart regulations may provide for sanctions to be imposed on persons in relation to—
  - (a) non-compliance with a prohibition or requirement imposed by or under such regulations;
  - (b) providing false or misleading information in relation to any such prohibition or requirement.
- (2) The regulations may, in particular, provide for the imposition of civil penalties, including graduated or multiple penalties in connection with a continuous or serious act or omission.
- (3) Energy smart regulations may create offences relating to—
  - (a) contraventions (by act or omission) of requirements imposed by enforcement authorities;
  - (b) knowingly giving false or misleading information to enforcement authorities;
  - (c) the obstruction (by act or omission) of persons acting on behalf of enforcement authorities;

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- (d) the impersonation of persons acting on behalf of enforcement authorities.
- (4) Regulations which create an offence must provide for the offence to be triable only summarily.
- (5) Regulations may not provide for an offence to be punishable with imprisonment.
- (6) Regulations may provide for enforcement authorities to recover costs.

### **243 Appeals against enforcement action**

- (1) Energy smart regulations that provide for the imposition of a requirement or civil penalty by an enforcement authority must include provision for a right of appeal to a court or tribunal against that requirement or penalty.
- (2) Provision falling within [subsection \(1\)](#) includes, in particular, provision—
  - (a) as to the jurisdiction of the court or tribunal to which an appeal may be made;
  - (b) as to the grounds on which an appeal may be made;
  - (c) as to the procedure for making an appeal (including any fee which may be payable);
  - (d) suspending the imposition of the requirement or penalty, pending determination of the appeal;
  - (e) as to the powers of the court or tribunal to which an appeal is made;
  - (f) as to how any sum payable in pursuance of a decision of the court or tribunal is to be recoverable.
- (3) In relation to the imposition of a requirement, the regulations may provide for persons other than the person against whom the requirement was imposed to also have a right of appeal.
- (4) The provision referred to in [subsection \(2\)\(e\)](#) includes provision conferring on the court or tribunal to which an appeal is made power—
  - (a) to confirm or withdraw the requirement or penalty;
  - (b) to vary or remove a part of the requirement;
  - (c) to vary the amount of the penalty;
  - (d) to award costs or, in Scotland, expenses.
- (5) If the Secretary of State considers it appropriate for the purpose of, or in consequence of, any provision falling within [subsection \(2\)\(a\), \(c\), \(e\) or \(f\)](#), the regulations may revoke or amend any subordinate legislation.
- (6) In [this section](#) “subordinate legislation” has the meaning given in section 21(1) of the Interpretation Act 1978 and includes an instrument made under—
  - (a) an Act of the Scottish Parliament;
  - (b) a Measure or Act of the Senedd Cymru.

### **244 Regulations: procedure and supplemental**

- (1) Regulations under [section 239](#) may provide for exemptions or exceptions.
- (2) Energy smart regulations may make provision about the sharing of information between an enforcement authority and the GEMA for the purposes of their functions in relation to energy smart appliances and load control.

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- (3) The Secretary of State must consult such persons as the Secretary of State thinks fit before making regulations under [section 239](#) that—
  - (a) make a description of appliance subject to energy smart regulations;
  - (b) amend the list of purposes in [section 239\(2\)](#).
- (4) [Subsection \(3\)](#) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (5) The first energy smart regulations, and any regulations under [section 239](#) that (with or without other provision) amend the list of purposes in [section 239\(2\)](#) or create a criminal offence (see [section 242](#)), are subject to the affirmative procedure.
- (6) Energy smart regulations that are not within [subsection \(5\)](#) are subject to the made affirmative procedure if they—
  - (a) are the first energy smart regulations to make provision about a particular description of energy smart appliance,
  - (b) make provision by virtue of [section 239\(4\)\(b\)](#) imposing requirements of a kind not previously imposed by energy smart regulations,
  - (c) make provision by virtue of [section 240\(1\)\(a\)](#) or (b) by reference or in relation to a published document, standard or list (as the case may be) in respect of which such provision has not previously been made,
  - (d) confer new powers for the enforcement of energy smart regulations, or
  - (e) make provision by virtue of [section 242\(2\)](#) for the imposition of new civil penalties.
- (7) A revised version of a published document, standard or list is to be disregarded for the purposes of [subsection \(6\)\(c\)](#) if provision has previously been made in respect of the document, standard or list by virtue of [section 240\(1\)\(a\)](#) or (b) (as the case may be).
- (8) Any other regulations under [section 239](#) are subject to the negative procedure.

## CHAPTER 3

### LICENSING OF LOAD CONTROL

#### **245 Power to amend licence conditions etc: load control**

- (1) The Secretary of State may modify—
  - (a) the conditions of a licence granted under section 6(1) of the Electricity Act 1989;
  - (b) the standard conditions incorporated in such licences by virtue of section 8A of that Act;
  - (c) the conditions of a licence granted under section 7A(1) or 7AB of the Gas Act 1986;
  - (d) the standard conditions incorporated in such licences by virtue of section 8 of that Act;
  - (e) a document maintained in accordance with the conditions of a licence granted under section 6(1) of the Electricity Act 1989 or section 7A(1) or 7AB of the Gas Act 1986, or an agreement that gives effect to a document so maintained.

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- (2) The Secretary of State may exercise the power conferred by subsection (1) for the purposes of facilitating, promoting, ensuring the security of, or otherwise regulating load control or other activities falling within section 56FBA(2) of the Electricity Act 1989.
- (3) Modifications made to the conditions of a licence may include provisions of a kind mentioned in section 7 of the Electricity Act 1989 or section 7B of the Gas Act 1986 (as appropriate) and may in particular—
- (a) regulate or prohibit the provision of load control in relation to appliances that are not compliant with energy smart regulations or any technical standards specified in or under a condition;
  - (b) regulate the provision of load control in relation to appliances that are compliant with energy smart regulations or any technical standards specified in or under a condition;
  - (c) require the holder of a licence to supply information to the Secretary of State or the GEMA (or both) so as to enable them to assess any matter relating to the purposes mentioned in subsection (2);
  - (d) require the holder of the licence to enter (or refrain from entering) into an agreement of a specified kind, or with a specified person;
  - (e) require the holder of a licence to supply information about tariffs (including to such persons, and in such a format, specified in or under a condition).
- (4) The power conferred by subsection (1)—
- (a) may be exercised to make different provision in relation to different areas or different classes of customer;
  - (b) may be exercised generally, only in relation to specified cases or subject to exceptions (including provision for a case to be excepted only so long as specified conditions are satisfied);
  - (c) may be exercised differently in different cases or circumstances;
  - (d) includes a power to make incidental, supplementary, consequential or transitional modifications.
- (5) The power conferred by subsection (1) may not be exercised after the period of 10 years beginning with the day on which [this section](#) comes into force.
- (6) The Secretary of State may, by regulations, extend (or further extend) that period.
- (7) Regulations under [subsection \(6\)](#)—
- (a) may not extend the period (or any extended period) by more than three years at a time, and
  - (b) are subject to the affirmative procedure.
- (8) In [this section](#) “modify” includes remove or fail to incorporate and “modification” is to be construed accordingly.

#### **246 Power to amend licence conditions etc: procedure**

- (1) Before making a modification, the Secretary of State must consult—
- (a) the holder of any licence being modified,
  - (b) the GEMA, and
  - (c) such other persons as the Secretary of State considers appropriate.



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- (2) Subsection (1) may be satisfied by consultation before, as well as by consultation after, the passing of this Act.
- (3) The Secretary of State must specify the date upon which any modification is to have effect.
- (4) The Secretary of State must publish details of any modifications as soon as reasonably practicable after they are made.
- (5) In [this section](#) “modification” means a modification under [section 245](#).

#### **247 Load control: supplemental**

- (1) A modification under [section 245](#) of part of a standard condition of a licence does not prevent any other part of the condition from continuing to be regarded as a standard condition for the purposes of Part 1 of the Gas Act 1986 or Part 1 of the Electricity Act 1989.
- (2) Where the Secretary of State makes modifications under [section 245\(1\)\(b\)](#) or [\(e\)](#) of the standard conditions of a licence of any type, the GEMA must—
  - (a) make the same modification of those standard conditions for the purposes of their incorporation in licences of that type granted after that time, and
  - (b) publish the modification.

#### **248 Application of general duties to functions relating to load control**

- (1) Sections 4AA to 4B of the Gas Act 1986 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in [subsection \(2\)](#), of functions conferred on the Secretary of State or the GEMA by or under sections [245](#) to [247](#).
- (2) The matters are—
  - (a) activities required to be authorised by gas licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.
- (3) In section 4AA(2)(b) of the Gas Act 1986 (duty to have regard to ability of licence holders to finance obligations) for “or sections 26 to 29 of the Energy Act 2010” substitute “, sections 26 to 29 of the Energy Act 2010, or sections [245](#) to [247](#) of the Energy Act 2023”.
- (4) Sections 3A to 3D of the Electricity Act 1989 (principal objectives and general duties) apply to the carrying out, as respects the matters mentioned in [subsection \(5\)](#), of functions conferred on the Secretary of State or the GEMA by or under sections [245](#) to [247](#).
- (5) The matters are—
  - (a) activities required to be authorised by electricity licences,
  - (b) such licences and the conditions of such licences,
  - (c) documents maintained in accordance with the conditions of such licences, or agreements that give effect to documents so maintained, and
  - (d) companies holding such licences.

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- (6) In section 3A(2)(b) of the Electricity Act 1989 (duty to have regard to ability of licence holders to finance obligations) for “or the Nuclear Energy (Financing) Act 2022” substitute “, the Nuclear Energy (Financing) Act 2022 or sections 245 to 247 of the Energy Act 2023”.
- (7) In section 33(1) of the Utilities Act 2000 (standard conditions of electricity licences)—
- (a) omit the “or” at the end of paragraph (j), and
  - (b) after paragraph (k) insert “or,
    - (l) under sections 245 to 247 of the Energy Act 2023.”
- (8) In [this section](#)—
- “electricity licence” means a licence for the purposes of section 4 of the Electricity Act 1989 (prohibition on unlicensed activities);
  - “gas licence” means a licence for the purposes of section 5 of the Gas Act 1986 (prohibition on unlicensed activities).

## **249 Licensing of activities relating to load control**

[Schedule 19](#), which amends the Electricity Act 1989, provides for the licensing of load control.